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CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

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Cuestiones Políticas

La revista **Cuestiones Políticas,** es una publicación auspiciada por el Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche" (IEPDP) de la Facultad de Cienhcias Jurídicas y Políticas de la Universidad del Zulia.

Entre sus objetivos figuran: contribuir con el progreso científico de las Ciencias Humanas y Sociales, a través de la divulgación de los resultados logrados por sus investigadores; estimular la investigación en estas áreas del saber; y propiciar la presentación, discución y confrontación de las ideas y avances científicos con compromiso social.

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Crisis del modelo democrático en el siglo XXI

DOI: https://doi.org/10.46398/cuestpol.4072.00

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Nadiia Babarykina **

Resumen

El objetivo del texto es servir de editorial a la edición volumen 40, número 72, enero-junio de 2022 de Cuestiones Políticas. Metodológicamente se trata de un ensayo editorial de carácter reflexivo basado en fuentes documentales consultadas en formato digital. La crisis del modelo democrático es de algún modo un fenómeno global que afecta, en mayor o menor medida, a todas las sociedades modernas que han adoptado al gobierno del pueblo y al poder del pueblo como forma de estado y de gobierno con rango constitucional. Se concluye que, la democracia, más allá de sus diferentes expresiones y modalidades, es el único sistema político que permite el goce y disfrute de los derechos humanos en un marco social de libertad, calidad de vida y dignidad, pero a pesar de sus bondades no está exenta de contradicciones como: la crisis de representación, la pérdida de confianza en las instituciones políticas y la corrupción de los partidos políticos y sus respectivos liderazgos; estas contradicciones ponen en juego la legitimidad de esta forma de gobierno y además crean las condiciones de posibilidad para la producción de liderazgo neopopulistas o neoconservadores que revindican formas autoritarias de ejercer el poder en detrimento del estado de derecho.

Palabras clave: crisis del modelo democrático; crisis de la representación política; nuevo pensamiento político; liderazgos autoritarios; conflictos políticos globales.

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Crisis of the democratic model in the twenty-first century

Abstract

The objective of the text is to serve as an editorial to the edition volume 40, number 72, January-June 2022 of Political Issues. Methodologically, it is an editorial essay of a reflective nature based on documentary sources consulted in digital format. The crisis of the democratic model is in some way a global phenomenon that affects, to a greater or lesser extent, all modern societies that have adopted the government of the people and the power of the people as a form of state and government with constitutional status. It is concluded that democracy, beyond its different expressions and modalities, is the only political system that allows the enjoyment and enjoyment of human rights in a social framework of freedom, quality of life and dignity, but despite its benefits it is not exempt from contradictions such as: the crisis of representation, the loss of confidence in political institutions and the corruption of political parties and their respective leaderships; these contradictions put at stake the legitimacy of this form of government and also create the conditions of possibility for the production of neo-populist or neoconservative leadership that vindicate authoritarian ways of exercising power to the detriment of the rule of law.

Keywords: crisis of the democratic model; crisis of political representation; new political thought; authoritarian leadership; global political conflicts.

Editorial

Históricamente todos los modelos políticos junto a las ideas que les sirven de sustento han sido superados cuando pierden su capacidad de adaptarse a las demandas de bienestar de las personas y comunidades que en sus interacciones cotidianas construyen las realidades políticas o, cuando ya no puede ser mantenido solo por la violencia pura. En este orden de ideas, la democracia no es la excepción y, por lo tanto, debe evolucionar continuamente para dar respuesta a los requerimientos legítimos de libertad, prosperidad, orden y reconocimiento de las sociedades humanas en el siglo XXI y, al mismo tiempo, hacer frente a las amenazas y desafíos que imponen las fuerzas antidemocráticas del mundo de hoy.

La emergencia de lideres autoritarios camuflajeados con diferentes mascaras ideológicas, quienes personalizan los procesos políticos en función de intereses mezquinos que nada tienen que ver con la voluntad general o el interés colectivo, la corrupción generalizada de los partidos políticos y sus liderazgos tradicionales, la desconfianza legitima de una ciudadanía

en el orden establecido que ve con preocupación la erosión sistemática de los espacios democráticos fundamentales para la convivencia humana, son factores que en su conjunto permiten hablar, sin exagerar, de la crisis del modelo democrático en el siglo XXI (Villasmil *et al*., 2021).

Las innovaciones teóricas en materia democrática con avances importantes como la democracia deliberativa, la democracia radical de base, la democracia multicultural o la llamada democracia participativa en Latinoamérica, entre otras, no han sido suficiente para superar las contradicciones de esta forma de gobierno, cada vez más evidentes en las representaciones políticas de una ciudadanía que ve con pesar, mucho más en el sur global, como sus expectativas de mejora sustancial de su condición de vida, son defraudadas sistemáticamente por el sistema político que tantas luchas sociales costo en instaurar.

Esta situación que se sintetiza en un sentimiento colectivo de antipolítica (Soracá, 2019), presagia al menos la estructuración de tres escenarios posibles a suceder en las próximas décadas: el primer escenario tienen que ver con la perdida de legitimidad total de la democracia y su superación por otra forma de gobierno diferente que no necesariamente tenga que ver con un retorno a formas autoritarias previas a las democracias modernas, sino más bien, con la emergencia de un nuevo pensamiento político libertario más próximo al anarquismo, esto es, al gobierno de la libertad y la organización post-estatal de las sociedades humanas más avanzadas en lo económico, tecnológico, político y cultural.

En el segundo escenario que visualizamos la democracia logra superar exitosamente sus limitaciones y contradicciones, internas y externas, y se ve renovada por las tecnologías de la comunicación e información TICs, poniendo a su servicio los avances en inteligencia artificial para mejorar el aparato de toma de decisiones con la lógica reducción de las cuotas de poder de las elites burocráticas, tal como presagian desde ya los teóricos del Gobierno abierto, de la justicia digital y de la democracia 2.0.

El tercer escenario posible, es por su naturaleza el más negativo para el desarrollo de la autonomía y autodeterminación de la persona humana y se manifieste en un retorno global de formas de estado y de gobierno totalitarias (Arendt, 2004) como las presagiadas en su momento por la literatura distopía de obras como *1984 o Rebelión* en la granja de la autoría de George Orwel, entre otras. Como lo demostró la experiencia política del siglo XX con dos guerras mundiales y la llamada guerra fría, estas formas de gobierno menoscaban, en todos los modos imaginables, la dignidad humana y hacen un uso sesgado de narrativas nacionalistas, antimperialistas o de fundamentalismos religiosos para oprimir a la sociedad en general en beneficio de una elite de poder avara y mezquina.

Incluso se puede imaginar también un cuarto escenario de conflictos híbridos para la democracia, de hecho, un escenario muy complejo en el cual se conjuguen en igualdad de condiciones la emergencia de fuerzas totalitarias como hegemónicas en la escena internacional relativamente legitimadas en la opinión pública por la incapacidad de las democracias liberales para desenvolverse al calor de los nuevos desafíos históricos de un mundo caótico, lo que a su vez poder determinar la construcción de un nuevo pensamiento político de cara a la libertad pero con un contenido todavía incierto par la inteligencia de hoy.

Por estas razones y escenarios se concluye que, la democracia, más allá de sus diferentes expresiones y modalidades, es el único sistema político conocido hasta hoy que permite, más allá de sus problemas, el goce y disfrute de los derechos humanos en un marco social de libertad, calidad de vida y dignidad, pero a pesar de sus bondades no está exento de contradicciones como: la crisis de representación, la pérdida de confianza en las instituciones políticas y la corrupción de los partidos políticos y sus respectivos liderazgos. Estas contradicciones ponen en juego la legitimidad de esta forma de gobierno y crean las condiciones de posibilidad para la producción de liderazgo neopopulistas o neoconservadores que revindican formas autoritarias de ejercer el poder en detrimento del estado de derecho (Oleksenko, 2017).

Precisamente de la solución a tiempo de estas crisis en las distintas sociedades democráticas dependerá la prolongación en el tiempo de esta forma de gobierno, situación que requiere de un estudio científico particular de cada experiencia de poliarquía de la mano de un equipo multidisciplinario y, más importante aún, del apoyo de la sociedad civil organizada dispuesta a edificar una mejor realidad.

En este contexto, en el horizonte epistemológico se puede inferir que la revitalización de las democracias del siglo XXI y/o, también, el surgimiento de una nueva forma de gobierno post-estatal, de cara a la libertad más democrático o postdemocrático, depende en buena medida de la articulación armónica de la democracia formal con la llamada democracia de resultados en un clima general de desarrollo sostenible y de equidad y dignidad para los animales humanos y los no humanos (Nussbaum, 2012).

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Derecho Público

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Marketing público en el turismo y su impacto en el desarrollo empresarial

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Resumen

El objetivo del artículo consiste en analizar a nivel teórico el marketing público en el sector turismo y su impacto en el desarrollo empresarial. Terminada la pandemia de COVID-19 todo indica que el turismo se posiciona como negocio rentable que tiene la capacidad de dinamizar el desarrollo de diferentes dimensiones de la economía, de ahí que la mayoría de los países avanzados tengan elaborada una política de marketing de turismo para promover sus diferentes opciones naturales, culturales, de infraestructura y recreación. Metodológicamente se trata de una investigación documental y analítica. Los resultados obtenidos permiten concluir que una buena estrategia de marketing es fundamental cuando se trata de captar inversiones y turistas; no obstante, esta estrategia no es estándar, sino que va a depender de las capacidades, recursos, infraestructura hotelera y, por supuesto, de los interés y planes de desarrollo empresarial de cada país. Por lo demás, la forma m**á**s adecuada para valorar el éxito o fracaso del marketing público,

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esto es, el desarrollado por el Estado y su entramado institucional, es analizando, mediante evidencia empírica concreta, los resultados de esa estrategia propagandística con un modelo muy similar al empleado en el campo de la evaluación de políticas públicas en general.

Palabras clave: marketing público; turismo; desarrollo empresarial; dinamismo económico; captación de inversiones.

Public marketing in tourism and its impact on business development

Abstract

The objective of the article is to analyze at a theoretical level public marketing in the tourism sector and its impact on business development. After the COVID-19 pandemic, everything indicates that tourism is positioned as a profitable business that has the capacity to boost the development of different dimensions of the economy, hence most advanced countries have developed a tourism marketing policy to promote their different natural, cultural, infrastructure and recreation options. Methodologically it is a documentary and analytical research. The results obtained allow us to conclude that a good marketing strategy is essential when it comes to attracting investments and tourists; however, this strategy is not standard, but will depend on the capacities, resources, hotel infrastructure and, of course, the interests and business development plans of each country. Moreover, the most appropriate way to assess the success or failure of public marketing, that is, that developed by the State and its institutional framework, is to analyze, through concrete empirical evidence, the results of this propaganda strategy with a model very similar to that used in the field of public policy evaluation in general.

Keywords: public marketing; tourism; business development; economic dynamism; attracting investment.

Introducción

El turismo es una actividad económica de alto impacto que tiene la capacidad, directa e indirecta, de impulsar múltiples actividades comerciales en el sector de los servicios, en este orden de ideas de Lambogglia (2014), destaca que más exactamente el turismo es una síntesis de actividades económicas, ya que: “Este sector está conformado por varios sectores de

la economía como la hotelería, restaurantes, transporte, agencias de viaje, recreación, entre otros, por lo que ha sido considerado una de las industrias más grandes del Mundo" (2014: 02).

El objetivo del artículo consiste en analizar a nivel teórico el marketing público en el sector turismo y su impacto en el desarrollo empresarial. Terminada la pandemia de COVID-19 todo indica que el turismo se posicionara como negocio rentable que tiene la capacidad de dinamizar el desarrollo de diferentes dimensiones de la economía, de ahí que la mayoría de los países avanzados tengan elaborada una política de marketing de turismo para promover sus diferentes opciones naturales, culturales, de infraestructura y recreación.

Por su potencial económico global de fenómeno que dinamiza distintas activades económicas, el turismo al decir de la Cámara de Comercio de España (2021), crea las condiciones de posibilidad para que se dé una interdependencia entre diferentes actividades productivas y no se limita a la generación de ganancias inmediatas, ya que su ámbito de influencia rebasa en cada momento la actividad que le es específica, al propagarse al conjunto de ramas de la economía mediante el consumo de aprovisionamientos o inputs. Por ejemplo, un restaurante de un prestigioso hotel puede servirse, a su vez, de los productos agrícolas de una localidad cercana.

Por estas razones y por muchas otras, las diferentes estructuras de gobierno: locales, regionales y nacionales han creado ministerios de turismos o instituciones similares reguladas por la ley que, en sus particulares contextos, diseñan, ejecutan y evalúan coordinadamente políticas de promoción y desarrollo del turismo. En el marco de estas políticas públicas, el Marketing del turismo se constituye en una de las principales herramientas que busca incidir en el desarrollo empresarial de una industria sostenible, que genere valor agregado a la sociedad.

Concretamente el artículo se divide en cuatro grandes secciones interrelacionadas: en la primera, se definen los principales conceptos junto a la metodología que da sustento a la investigación, la cual vincula en igualdad de condiciones el marketing público en turismo y el desarrollo empresarial; en la segunda, se expone sucintamente la relación dialéctica y causal que se da entre turismo, marketing y desarrollo empresarial. De seguida, la tercera sección configura, a grandes rasgos, una propuesta para la evaluación científica de las políticas de marketing de turismo y, por último, se presentan las principales conclusiones del caso para debate y discusión de la comunidad académica internacional.

1. Aproximaciones conceptuales y metodología

La idea de escribir el presente trabajo en español con un predominio de fuentes iberoamericanas responde a la firme intención de este equipo de investigadores ucranianos de conocer el acervo científico de América Latina, entendida como una región emergente con aportes significativos para el enriquecimiento de la cultura académica global, tal como lo evidencia entre otras cosas la cantidad y calidad de sus revistas científicas de alto impacto.

La metodología documental es la que mejor se adapta a la naturaleza de investigaciones como la presente, que intentan efectuar un balance sobre el alcance y significado de un problema de investigación de interés general, sin necesariamente recurrir al soporte de evidencia empírica. En palabras de Maradiaga (2015):

> (…) el proceso de investigación documental se dispone, esencialmente, de documentos, que son el resultado de otras investigaciones, de reflexiones de teóricos, lo cual representa la base teórica del área objeto de investigación, el conocimiento se construye a partir de su lectura, análisis, reflexión e interpretación de dichos documentos. En dicho proceso se vive la lectura y la escritura como procesos de construcción de significados, vistos en su función social (2015: 22).

En efecto, la resolución del objetivo planteado fue posible fundamentalmente mediante el acopio, análisis, reflexión y contrastación de fuente documentales las cuales aportaron luces sobre el Marketing público en el turismo y su impacto en el desarrollo empresarial, como fenómenos de interés global. Del mismo modo, el método analítico entendido en el sentido que lo definen Lopera *et al*., (2010) como descomposición de todos los elementos de un fenómeno o totalidad determinada y como condición suficiente y necesaria para lograr su comprensión y rearticulación, fue esencial para obtener los resultados de la investigación y arribar a las conclusiones del caso.

Por lo demás, en este apartado también se presentan los principales conceptos y categorías de análisis que estructuran el tema de estudio tales como: Marketing público en turismo y desarrollo empresarial, desde la particular perspectiva de los autores, no como definiciones aisladas, sino como conceptos interrelacionados que solo pueden ser abordados en sus relaciones dialécticas.

Marketing público en turismo

El marketing es la disciplina de la publicidad encargada de la promoción de los bienes y servicios que se ofertan en un mercado determinado, para lo cual articula distintos métodos y teorías provenientes de ámbitos tan diversos como: las ciencias de la comunicación, la psicología social, la antropología cultural, la publicidad o la semiótica, entre otras. En este

orden de ideas, Martos (2000) explica que la razón de ser del markenting de turismo, en particular, es la compresión profunda de las necesidades, aspiraciones y gustos del cliente. Captado este conocimiento la labor del publicista radica ahora en ofertar productos y servicios competitivos para satisfacer las necesidades objetivas y subjetivas del consumidor y obtener así una rentabilidad económica; en este complejo proceso se crean y combinan un conjunto de técnicas y acciones destinadas a alcanzar los objetivos trazados.

Del mismo modo, en el Blog Turismo (2020), se destaca que:

> El Marketing Turístico es un área dedicada a diseñar planes de comercialización para el negocio del turismo. En ella se integran tanto viajes como alojamientos. La disciplina se basa en ofrecer las mejores ofertas al cliente adecuado, cuidando cada detalle a través de estrategias integradas en las últimas tendencias (2020: s/p).

Cuando se habla de marketing público en turismo las preguntas obligadas son ¿Quién diseña los planes? ¿Quién escoge a los clientes adecuados? ¿Qué interés prevalecen en el proceso de planificación y ejecución de la mejor estrategia? Obviamente que la responsabilidad radica en el equipo de profesionales del ministerio de turismo o la institución equivalente dependiendo del país que se trate; planes que, de ser definidos en la escala nacional, deben ser adoptados a las capacidades y recursos turísticos de diferentes regiones y localidades en una dinámica que comúnmente se ve afectada por los mismos vicios y contradicciones de los procesos políticos en general.

Por ejemplo, para el caso de Ucrania, Oleksenko *et al.,* (2021) indican que los fundamentos conceptuales para el desarrollo de la política turística de este país no están del todo clarificados, en consecuencia, urge la puesta en marcha de un proceso de actualización de la legislación nacional que rige la materia con un doble propósito; por un lado, articular la legislación nacional con la europea más avanzada en términos de desarrollo del turismo y la hostelería y; por el otro, construir consensuadamente junto a todos los actores y factores involucrados los objetivos estratégicos de la política estatal del sector turismo para formar un espacio de turismo único junto a la Comunidad de estados Independientes (CEI).

Para el caso de Argentina la situación de falta de visión estratégica por parte de las autoridades que rigen la materia no es muy diferente, ya que, como indican Malaspina *et al.,* (2021), todas las estrategias de marketing de turismo a nivel público se han visto opacadas por problemas estructurales como: "(i) la escasez de información, control interno y rendición de cuentas; (ii) la incorporación de tecnologías y nuevos paradigmas de gobierno, (iii) y el logro de un federalismo que permita un desarrollo territorial más equilibrado e inclusivo" (2021: 22).

Turismo y desarrollo empresarial

Como ya se ha explicado taxativamente, al ser el turismo una actividad económica de síntesis, esto es, que incorpora un conjunto de agentes económicos en su movilidad, su progreso supone también y en todo momento, el desarrollo empresarial, de modo que se puede afirmar en forma de axioma, que en la teoría y en la realidad, el desarrollo turístico viene acompañado al mismo tiempo de desarrollo empresarial en una dinámica que con sus límites puede significar una espiral comercial ascendente de ambos factores.

Incluso de estar bien encausado en una política pública y estrategia coherente el turismo puede llegar a convertirse no solo en una fuerza para el desarrollo empresarial, sino, además, para el desarrollo local integral, tal como lo afirman Montaño y Pérez (2014) en su estudio en el que concluyen que, en el caso de la experiencia de Los Cabos, el desarrollo local ha sido impulsado por una estrategia de cooperación interempresarial en el marco del espacio más amplio del turismo, por lo demás: "Las características de las formas de organización para la cooperación entre empresas, permiten indicar o sugerir que se requiere fortalecer el papel del gobierno como gestor institucional del desarrollo local en Los Cabos, aprovechando la sinergia que generan las actividades turísticas en la zona" (2014: 16). Por su puesto, esta conclusión es fácilmente extrapolable a otras realidades, cercanas o lejanas.

De lo que se trata aquí es de construir en las representaciones sociales del empresariado del turismo una visión amplia y holística de este negocio para que trascienda el afán de lucro cortoplacista y se posicione, en contraste, como una estrategia integral de desarrollo que genera empleo, capta inversiones públicas y privadas y, muy especialmente, impulsa el desarrollo de las capacidades humanas de las personas y comunidades que participan en esta actividad. Sin lugar a duda, la construcción de una visión así, que signifique una nueva cultura del turismo, puede y debe ser impulsada como un objetivo transversal de toda política en turismo, que logre relacionar turismo y desarrollo empresarial como juego de suma positiva.

2. Relación turismo y desarrollo empresarial como juego de suma positiva

El turismo es, sin exagerar, uno de los negocios más rentables y lucrativos del mundo actual, tal como lo afirma Orús (2021):

> (…) la industria turística es responsable de la creación de más de 270 millones de empleos, entre directos e indirectos. Además, su aportación al PIB mundial superó los 4,5 billones de dólares estadounidenses en el último año... La actividad

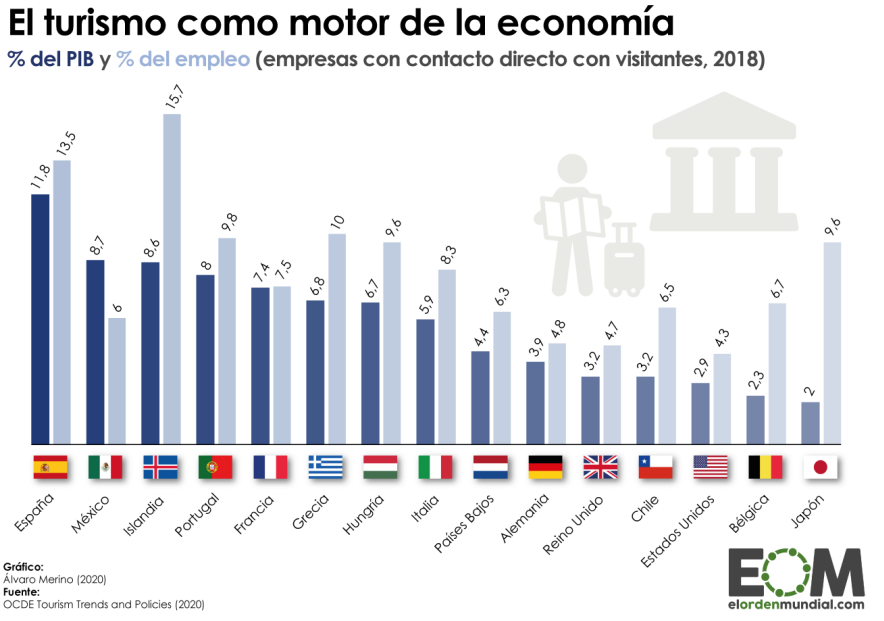
> generada por los sectores de la hostelería, las agencias de viaje, el transporte de pasajeros y del ocio en general consigue atraer, además, una importante inversión pública y de capital privado (2021: s/p).

En este orden de ideas, el turismo tiene la capacidad de impulsar el desarrollo empresarial en cualquier país del mundo siempre y cuando se den de forma combinada ciertas condiciones materiales, a saber:

1. Una política coherente de marketing de turismo.
2. Existencia de una infraestructura turística moderna.
3. Presencia de un sector servicio consolidado.
4. Servicios públicos de calidad.
5. Recurso humano capacitado.
6. Seguridad ciudadana
7. Comunidades de acogida con visión cosmopolita.
8. Biodiversidad y riqueza gastronómica.
9. Apoyo gubernamental al emprendimiento en turismo
10. Aeropuertos, helipuertos, puertos, terminales de pasajeros y vías de comunicación accesibles.

Sin la existencia de estas condiciones la industria del turismo y sus negocios afines est**á** destinada a fracasar, más allá de la firme intención de un conjunto de actores socioeconómicos interesados en invertir en este negocio, de ahí que toda "política consistente" en materia de turismo, debe estar orientada, en principio, a la creación, desarrollo y modernización continua de estas condiciones como garantía básica para su éxito. Es más, en las condiciones actuales de la pandemia de COVID-19 sucedía desde el 2020, el turismo no ha dejado de ser un negocio rentable en pleno desarrollo para las distintas empresas que apuestan por su mejora continua, tal como lo muestra el cuadro que se presenta a continuación:

Figura No. 1: El peso del turismo en el PIB y el empleo.



Fuente: El orden mundial.com (2018).

Por estas razones es que se afirma precisamente que terminada la pandemia de COVID-19 todo indica que el turismo se posiciona como negocio rentable. Tal como muestra el cuadro de datos previos a los efectos perjudiciales de la COVID-19 en el mundo, el turismo tiene un impacto significativo en el producto interno bruto y en el empleo en la muestra de los 15 países referenciados de América, Asia y Europa, lo que corrobora la información proporcionada anteriormente por Orús (2021).

En teoría de juegos, la noción de juego de suma positiva significa al decir de Stiglitz (2015) que lo que un jugador gana no es directamente proporcional a la perdida de los otros jugadores, en consecuencia, en un juego de suma positiva puede ocurrir que varios jugadores pueden ganar simultáneamente en una partida sin afectar las ganancias totales percibidas por los otros. Desde esta perspectiva, el juego de suma positiva es estrictamente distinto al juego de *suma cero*, en el cual lo que un jugador gana si es estrictamente proporcional a lo que otro u otros pierden, tal como sucede en una contiende electoral donde dos candidatos no pueden ganar simultáneamente para un mismo cargo de elección popular.

Al decir de Encyclopaedia Britannica (2020) la suma positiva, en la teoría o en la realidad, se genera cuando se aumentan los recursos materiales o simbólicos (dinero, capacidades, ideas sentimientos edificantes, entre otros) para la satisfacción de los deseos de todos los interesados: "Los resultados de suma positiva ocurren en instancias de negociación distributiva donde se negocian diferentes intereses para satisfacer las necesidades de todos" (2020: s/p). Este sentido, se infiere lógicamente que los juegos de suma positiva se caracterizan en general por mejorar las condiciones y expectativas de todos los jugadores, sin desequilibrios distribuidores de las ganancias totales, en beneficios de unos y en detrimento de otros.

Aunque difícilmente en la realidad concreta se puedan dar juegos de suma positiva en términos absolutos o ideales, ya que los recursos son siempre limitados y los intereses son contradictorios, como se verá a continuación el turismo y su impacto en el desarrollo empresarial encaja muy bien con esta perspectiva de teoría de juegos, ya que su influjo benéfico típico del desarrollo sostenible, tiene la capacidad de mejorar las condiciones de vida de las personas involucradas en su juego, siempre y cuando se den las condiciones políticas necesarias, tales como: gestión de conflictos, administración justa de recursos e impulso sostenido de las capacidades empresariales, lo que significa insertar en un proceso de mejoras continuas a las personas, grupos de trabajo y la comunidad en general.

La relación turismo y desarrollo empresarial como juego de suma positiva, se desarrolla cuando todos los factores participantes en el negocio: empresarios, políticos, trabajadores y sociedad civil, entre otros, tienen claridad sobre los beneficios generales, el modelo de negocios y los propósitos, los planes y proyectos turísticos de los que son parte, tal como se observan por ejemplo en algunas naciones que, como la mayoría de las islas del caribe, tiene en el turismo su principal fuente de divisas.

Todo indica que, en la configuración general de una cultura sostenible de turismo influye exponencialmente el marketing público de turismo, que normalmente desarrolla una doble campaña: por una parte, busca captar turistas y, por la otra, busca educar a la comunidad receptora sobre los beneficios, desafíos y oportunidades de desarrollo que trae consigo este negocio. De modo que, normalmente una buena estrategia de marketing de turismo puede combinar la publicidad con la pedagogía financiera de la localidad.

3. Evaluación de las políticas de marketing en turismo

El marketing de turismo se da en completa sintonía con una política pública que define los planes, proyectos, objetivos y estrategias del sector turismo en un país, comunidad o región en particular. En consecuencia, así

como las políticas públicas son sometidas normalmente a un proceso de revisión rigurosa, el marketing también debe ser evaluado científicamente como condición de posibilidad para determinar su éxito, fracaso o aspectos a mejorar en su estrategia.

En efecto, el marketing en turismo como agente impulsor del desarrollo empresarial debe ser considerado como un instrumento más de la política pública del sector turismo, aunque su evaluación pueda darse en particular; por lo demás, el Ministerio de política territorial y administración pública y agencia estatal de evaluación de las políticas públicas y la calidad de los servicios (2010) señalan que:

> La evaluación no es sólo una comprobación de conformidad de la acción pública, sino que expresa un juicio de valor sobre el éxito de los resultados y los impactos –deseados o no– de las políticas públicas y ese juicio de valor se debe extraer con el mayor rigor y garantías, de ahí la exigencia de una sólida metodología (2010: 05).

En este hilo conductor, los autores del artículo formulan una propuesta para la evaluación científica de las políticas de marketing de turismo en el ámbito del desarrollo empresarial, desde una metodología que pudiera resultar novedosa en el empeño de valorar de forma cualitativa los resultados y los impactos deseados con rigor científico. Se trata de una metodología fenomenología y hermenéutica que sin embargo no excluye la utilización instrumental de datos numéricos.

En la ciencias sociales la metodología fenomenológica significa el intento por comprender, sin sesgos ni distorsiones, la forma como las personas viven y sienten los fenómenos materiales y simbólicos que conforman sus realidades cotidianas, de modo que de lo que se trata en este marco teórico y metodólogo es de reconstruir las cadenas de signos y símbolos mediante los cuales los sujetos de estudios dotan de sentido y significado a sus mundos de vida, al calor de las representaciones socioculturales del tiempo y espacio en el cual están inmersos.

Por su parte, la metodología hermenéutica busca interpretar la experiencia fenomenológica de las personas, desde la compresión de sus prácticas, rituales, sentimientos, valores, discursos y criterios diferenciales. En palabras de Morella *et al.,* (2006) en la experiencia hermenéutica la acción del comprender deviene en la búsqueda del carácter óntico de la vida humana, mediante el análisis de un texto en su contexto; en este punto conviene aclarar además que, por texto, no solo se entiende a un documento escrito, sino, que se asume que la realidad misma es un contenido que puede ser leído sin agotar nunca su significación.

En este sentido, la metodología hermenéutica encaja muy bien con la fenomenología en su propósito superior de descifrar el significado que los sujetos de estudio otorgan a sus vidas mediante herramientas como

las entrevistas en profundidad, las historias de vida o los grupos focales de discusión, entre otras: "(...) en donde el intérprete establece un diálogo con el texto que involucra multiplicidad de significados, puntos de vista, concepciones dadas por su momento circundante diferente al del texto y al del autor mismo" (Morella *et al.,* 2006: 171).

En este orden de ideas, la pregunta que surge lógicamente es ¿cómo se pueden evaluar las políticas de marketing en turismo desde una perspectiva fenomenológica-hermenéutica? En principio para responder a esta pregunta conviene aclarar primero que, con una metodología híbrida así, se busca interpretar la forma como las personas involucradas en un proceso de elaboración de una campaña de marketing público en turismo para el desarrollo empresarial perciben (objetiva y subjetivamente) los aciertos, las amenazas, fortalezas, debilidades y oportunidades de su estrategia.

Figura No. 2: Metodología FODA.

Fuente: Wix.com (2015).

En efecto, la llamada metodología FODA posee la versatilidad necesaria para adaptarse bien a los requerimientos de los protocolos fenomenológicos y hermenéuticos. Al respecto, la evaluación que se propone parta de un circulo hermenéutico o entrevista a profundidad donde se efectúan preguntas a los sujetos de estudio como:

Figura No. 3 Propuesta de evaluación cualitativa de marketing en turismo

Fortalezas		Debilidades	Oportunidades	Amenazas	Categorías de sujetos de estudio	Instrumentos para la recolección de información	Observaciones
¿Cuál cree Ud., que es la fortaleza de esta campaña de marketing en turismo?	¿Cuáles son los aspectos a mejorar de esta campaña en marketing en turismo?	¿Qué oportunidades nos proporciona una campaña de marketing de turismo público como la planificada?	¿Qué obstáculos pueden impedir el logro de los objetivos de la campaña?	Hacedores de políticas, publicistas, empresarios, trabajadores de empresas de turismo y público en general.	Grupos focales de discusión; cuestionarios no estructurados; entrevistas en profundidad, entre otros.		
¿De qué modo esta campaña ha impactado en la dinámica de desarrollo empresarial?	¿Qué errores se cometieron en el proceso publicitario?	¿Qué ventajas nos proporciona nuestra estrategia de marketing?	¿Nuestra campaña de marketing en turismo debe enfrentar a la competencia?				
¿Qué tiene de especial esta estrategia de marketing en turismo si se le compara con otras campañas similares?	¿Qué objetivos no se lograron mediante la campaña?	¿Qué alianzas se pueden construir para el logro de los objetivos de la campaña?	¿Cuál seria el peor de los escenarios posibles para la campaña?				
¿Hasta qué punto hay una relación causal entre la campaña de marketing y el desarrollo empresarial en la localidad?	¿Qué actores o factores no se comportaron como se proyectó en la campaña?	¿Qué recursos y capacidades se tienen a disposición?	¿Qué se puede hacer de no obtenerse los objetivos planteados en los lapsos esperados?				

Fuente: Elaboración propia (2021).

Sin duda, esta propuesta pudiera incluir muchas preguntas más o incluso se puede diseñar cuestionarios de preguntas abiertas en función del perfil particular de cada uno de los sujetos de estudio; no obstante, todo dependerá de la capacidad creativa de los investigadores o evaluadores y de los indicadores que se quieran explorar en profundidad. También se pudieran agregar otros instrumentos diferentes en función de los gustos y capacidades del equipo de investigación. De cualquier modo, lo más recomendable en este aspecto es que, se cuente con el asesoramiento de

un grupo de científicos sociales con experiencia previa en el manejo de metodologías cualitativas de investigación científica.

Por último, en este punto no es adecuado pensar que la evaluación cualitativa viene a sustituir a las formas tradicionales de evaluación cuantitativas de carácter neopositivista, ganadas a traducir los fenómenos sociales a escalas numéricas de medición y control exhaustivo; se trata, mas bien, de proporcionar una mirada diferente que si bien es cierto es difícil aplicar a muestras amplias de personas, dada la naturaleza ideográfica e inductiva de la hermenéutica y la fenomenología, puede proporcionar una información m**á**s completa a los evaluadores sobre los aspectos subjetivos que entran en juego en el marketing de turismo.

De hecho, a nivel epistemológico la evaluación cualitativa y cuantitativa no tienen porque ser necesariamente excluyente, sino más bien formas de evaluación basadas en metodologías diferentes que pueden proporcionar unidades de información complementarias, en lo abstracto y concreto, en lo objetivo y subjetivo, muy útiles cuando se busca innovar en los mecanismos de evaluación y mucho m**á**s cuando, la evaluación es muy seguramente la fase decisiva de todo proceso general en la arquitectura de las políticas públicas.

Conclusiones

Los resultados obtenidos permiten concluir que una buena estrategia de marketing es fundamental cuando se trata de captar inversiones y turistas; no obstante, esta estrategia no es estándar, sino que va a depender de las capacidades, recursos, infraestructura hotelera y, por supuesto, de los interés y planes de desarrollo empresarial de cada país. Por lo demás, la forma más adecuada para valorar el éxito o fracaso del marketing público, esto es, el desarrollado por el Estado y su entramado institucional, es analizando, mediante evidencia empírica concreta, los resultados de esa estrategia propagandística con un modelo muy similar al empleado en el campo de la evaluación de políticas públicas en general**.**

Cuando se intenta analizar a nivel teórico el marketing público en el sector turismo y su impacto en el desarrollo empresarial, las opciones teóricas y metodológicas su múltiples; no obstante, desde cualquier perspectivas imaginable siempre será necesario idear una forma de evaluación que permita valorar los resultados obtenidos durante y después de terminada la campaña de marketing, de ahí que el aporte de los autores radicó, en este caso, en la formulación de un modelo de evaluación de esta forma de marketing mediante metodologías cualitativas, las cuales no excluyen el dato numérico, sino que ofrecen opciones adicionales de carácter científico.

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State tax policy as an object of administrative and legal regulation

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Abstract

The purpose of the research is devoted to studying the legal nature of legal relations in the process of implementing state tax policy. The main content. Considered is the normative framework which forms the basis for regulation of tax policy. Noted is close connection of this branch with all spheres of legal reality of the society. Analyzed are the concepts of "legal relations" and "legal regulation". The content of legal regulation of the tax sector is characterized through the study of public service, law enforcement and jurisdictional activities of the state in the tax sphere. Methodology. Review of materials and methods is performed on the basis of analyzing documentary materials on regulation of the state tax policy. Conclusions. It is determined that legal regulation in the sphere of tax policy includes public service, law enforcement and jurisdictional activity of the state, which is aimed at satisfaction of human rights and legitimate interests. Such activity is aimed at ensuring a high quality of life for people throughout the territory of Ukraine, and also at achieving an optimal balance between filling the budget and maintaining

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conditions for economic growth and improving social welfare. The sphere of taxes affects provision of national interests.

Keywords: the state tax policy; legal relations; legal regulation; public service relations; administrative and legal relations.

La política fiscal estatal como objeto de regulación administrativa y legal

Resumen

La investigación está dedicada a estudiar la naturaleza de las relaciones jurídicas en el proceso de implementación de la política tributaria estatal. Se considera el marco normativo que forma la base para la regulación de la política tributaria. También se analizan los conceptos de "relaciones jurídicas" y "regulación jurídica". El contenido de la regulación legal del sector tributario se caracteriza por el estudio de las actividades de servicio público, aplicación de la ley y jurisdiccionales del Estado en el ámbito tributario. La revisión de materiales y métodos se realiza sobre la base del análisis de fuentes documentales sobre la regulación de la política fiscal estatal. Como conclusión se determina que la regulación legal en el ámbito de la política tributaria incluye el servicio público, la aplicación de la ley y la actividad jurisdiccional del Estado, la cual está orientada a la satisfacción de los derechos humanos e intereses legítimos de la ciudadanía. Dicha actividad tiene como objetivo garantizar una alta calidad de vida para las personas en todo el territorio de Ucrania e, igualmente, lograr un equilibrio óptimo entre llenar el presupuesto y mantener las condiciones para el crecimiento económico y mejorar el bienestar social.

Palabras clave: política tributaria estatal; relaciones legales; regulación legal; relaciones de servicio público; relaciones administrativas y legales.

Introduction

Domestic experience and foreign practices demonstrate the impact of taxation on all spheres of public life, on the social aspect and the economic aspect. Through implementation of tax policy, the state can effectively stimulate economic activity, create favorable conditions for development of priority sectors of the economy, regulate budget filling.

Payment of taxes to a greater or lesser extent is a concern of every person. The need to pay taxes does not depend on specific circumstances, i.e., it is an absolute obligation. Thus, in accordance with Art.67 of the Constitution of Ukraine "Everyone is obliged to pay taxes and fees in manner and amounts prescribed by the law. All citizens annually submit their property and income declarations for the past year to the tax inspections at place of residence in manner prescribed by the law" (Law of Ukraine, 1996).

At the present stage of Ukraine's development, which, on the one hand, is characterized with European integration processes and, on the other hand, with the state of external military aggression, qualitative legal regulation of tax legal relations becomes especially relevant and important.

Art. 10 the of the Commercial Code of Ukraine stipulates that tax policy should be aimed at ensuring economically justified tax burden on business entities, stimulating socially necessary economic activities of entities, as well as compliance with the principle of social justice and constitutional guarantees of citizens' rights in conditions of taxing their incomes (Law of Ukraine, 2003).

Highlighting the administrative and legal aspect in the regulation of legal relations arising during implementation of tax policy and disclosing its essence will help to ensure priority of taxpayers' rights, balance interests of taxpayers, find effective mechanisms for timely formation of public monetary funds and protect national interests.

1. Literature review

V. Teremetskyi (2012) notes that international and domestic practice shows that tax relations in most countries of the world are regulated by coded acts (and Ukraine is not an exception in this regard). The Tax Code of Ukraine, just like the Belarusian one, defines the scope of the Tax Code itself, not the area of tax relations in general. Thus, Art.1 of the Tax Code of Ukraine defines the range of public relations that arise in the sphere of collection of taxes and fees and fall within the scope of its action (regulation). However, the analysis of the provisions of this article gives us an opportunity to conclude that some aspects of tax relations are not covered (in particular, the establishment (introduction) of taxes, appeals against decisions and actions of tax authorities and their officials, etc.). Instead, such term as "administrative procedure" is introduced, although its content is not disclosed in the code.

In addition to that V. Teremetskyi (2012) emphasizes that not all available tax legal structures completely fall into the sphere of tax and legal regulation. Some of them are the subject of other branches of financial law

and even other legal entities. Thus, within the group of legal relations on the collection of taxes and fees, relations that provide for the collection of taxes, fees and penalties from individuals and organizations, which are carried out in court, are governed by civil procedural or commercial procedural law (Teremetskyi, 2012).

In his turn L. Dolia notes that tax relations are a form of expression of economic, political and other relations (Dolia, 2003).

When analyzing his issue N. Khatnyuk concludes that taxation is closely connected with all spheres of legal reality of the Ukrainian society, so it is quite logical that the legal regulation of tax relations is reflected in a large number of regulatory acts. At the same time, a large number of legal sources make it difficult to understand certain tax laws and can lead to ambiguous interpretation of them by both tax payers and officials of the controlling body (Khatnyuk, 2017).

Thus, taking into account a rather wide range of issues the sphere of taxation intersects with, we believe that for further research it will be expedient to consider the content of a more general concept, i.e. the concept of "legal relations".

However, it should be noted that it is difficult to distinguish between administrative law and complex branches of law. For example, the mechanism of the ratio of the administrative law and he tax law is such that most of the relations that form the subject of the latter are regulated by the rules of the administrative law and with the help of its inherent legal means. In view of this, the essence of the administrative and legal aspect in regulation of legal relations in implementation of the state tax policy needs further disclosure, and the chosen research topic acquires its relevance.

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of the state tax policy. The formal-dogmatic method contributed to development of the author's explanation of the current state, problems, and practical role of legal technologies for further development and improvement of the state tax policy. The officially legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of the state tax policy. The dialectical method of cognition of the facts of social reality is the foundation where formal-legal and, rather, legal approaches are based in many respects.

3. Results and discussion

Considering legal relations that exist in the sphere of the state tax policy, we should note that it is advisable to pay attention to the legal norms that make up the tax legislation of our state. Article 3 of the Tax Code of Ukraine contains the following list: The Constitution of Ukraine; the Tax Code of Ukraine; the Customs Code of Ukraine, other laws on customs affairs in the area of regulating legal relations, arising in connection with taxation of transactions on goods movement through the customs border of Ukraine; effective international agreements which have been confirmed to be obligatory by the Verkhovna Rada of Ukraine and which regulate the issues of taxation; Legislative acts adopted on the basis of and in compliance with the (Tax) Code and the laws on customs affairs; decisions made by the Verkhovna Rada of the Autonomous Republic of Crimea, local self-government bodies on local taxes and fees, adopted according to the rules established by the Tax Code (Law of Ukraine, 2010).

According to M. Zwick, legal relations are relations between people which are the legal expression of economic, political, family, procedural and other social relations, where one party based on legal norms requires the other party to perform certain actions or refrain from performing such actions, and the other the party is obliged to comply with these requirements.

A. Skakun believes that the rules of law and legal relations are interrelated, because the law can be applied only when certain events or actions are given the nature of legally significant facts (acts) that put people in the position of parties of legal relations that have interdependent subjective rights and legal obligations. Thus, legal relations are an objective form of realization of rights and obligations. In view of this, legal relations are considered as voluntary public relations provided by the state and regulated by law, they are expressed in a specific relationship between eligible subjects (bearers of subjective rights) and obligated subjects (bearers of responsibilities) (Skakun, 2010).

Summing up the words of the above-mentioned scientists, we come to the conclusion that legal relations in the sphere of regulation of tax policy are a variety of social relations regulated by the norms of the public law. At the same time, direction of legal regulation in the sphere of tax policy includes public service activity, law enforcement activity and jurisdictional activity of the state.

As noted by V. Averyanov, public service activity is the activity of relevant state and non-state bodies aimed at ensuring certain conditions determined in the course of their relations with the population, specific individuals and legal entities; under these conditions the latter are able to effectively exercise and protect their rights, freedoms and legal interests (Averyanov, 2011).

B. Guk writes that introduction of such a concept as "public service activity" into legal circulation has long been a cause of discussion in scientific circles, since such activity is based on constitutional position of social orientation of the state and it is a content of state's activity, state's duty to ensure human rights and freedoms (Guk, 2011).

O. Dzhafarova's scientific position is noteworthy in this regard. She proposes to focus on the analysis of more general categories, such as "state", "rights and freedoms of citizens" and "mechanism for ensuring rights and freedoms of citizens", as far as interconnection of the latter is central for the juridical science. Organization and functioning of the modern Ukrainian state is based on a social agreement, which provides that the state is formed by the will of free and independent persons and that it is obliged to promote in every way realization of human rights, and in case of their violation the state must protect the latter.

The other party to the social agreement also has certain obligations, including payment of taxes, compliance with established rules of conduct, duty to protect integrity of the state, etc. It should be noted that this gives individuals priority and opportunities to exercise their rights, in particular in relations with the public administration. It is in this way that the modern idea of the state is revealed: the state is an institution that provides certain services to persons who, so to say, order these services. The range of these services directly follows from the public functions of the state, which are the content, grounds for identification and consolidation of specific rights and duties of subjects of the respective relations (Dzhafarova, 2016). Public-service activity of the state in the sphere of tax policy includes, for example, administration of taxes, issuance of permits, etc.

Law enforcement activity is a type of state activity carried out in order to protect the law by specially authorized bodies by means of applying legal measures of influence strictly in accordance with the law and in strict compliance with the procedure established by the law (Leheza *et al*., 2018). In the sphere of the state tax policy, law enforcement activities include, for example, inspections of compliance with laws and other regulations. Administrative means of law enforcement nature include various forms and methods of control and supervision over the observance of law and discipline in the sphere of public administration, as well as the use of statutory means of educational and coercive influence.

They are used to protect the social order of Ukraine, property, socio-economic, political and personal rights and freedoms of citizens, rights and legitimate interests of enterprises, institutions and organizations, the established order of governance, state and public order, strengthening the rule of law, preventing and combating crimes, education of citizens in the spirit of strict observance of the Constitution and laws of Ukraine (Leheza *et al.,* 2021).

S. Komissarov argues that administrative and jurisdictional activities should be understood as regulated by law activities of authorized state bodies, local governments and their officials, aimed at: conducting proceedings in cases of administrative offenses, enforcement of administrative sanctions, and prevention and cessation of such offenses in order to protect the respective rights and freedoms of citizens, property, constitutional order of Ukraine, rights and legitimate interests of enterprises, institutions and organizations, established law and order, reinforcement of the rule of law, preventing offenses, educating citizens in the spirit of strict observance of the Constitution and laws of Ukraine, respect for human rights, honor and dignity as well as for rules of coexistence, conscientious performance of one's duties, responsibility to society (Komissarov, 2015).

L. Anokhina considers the concept of "administrative jurisdiction" in two aspects: static one (as a combination of powers of a subject of administrative jurisdiction) and functional-dynamic one (as a special type of law-enforcement activity) (Anokhina, 2001). The role of administrative responsibility in the fight against offenses is constantly growing, the number of administrative offenses is increasing, and penalties for misconduct become more severe. Liability is established for actions that did not previously belong to the category of offenses, for example violations of tax law, etc. (Leheza *et al.,* 2020).

When analyzing the concepts of legal regulation and legal relations we can see that they belong to the fundamental categories of science of administrative law, since it is in legal relations that such law exists, acts, and lives. Legal relations most clearly reflect the specifics of the method of administrative and legal regulation of public relations. In view of this, it is correct and necessary to establish a circle of those public relations regulated by the rules of administrative law, as this will give an opportunity to accurately identify the purpose of methods in this branch of law, study the full potential of their regulatory influence and determine the level of their effectiveness (Yurovskaya, 2016).

Y. Bityak notes that administrative-legal relations are public relations in the sphere of public administration, and participants of these public relations act as carriers of rights and obligations, regulated by the norms of administrative law. We can note the following features of administrative and legal relations:

1. in administrative and legal relations, rights and obligations require appropriate actions of an executive and administrative nature in order to be fulfilled.

2. a necessary condition for the emergence of administrative and legal relations is that there is an obligatory subject (the state) which must take part in them.

3. administrative and legal relations may arise at the initiative of each party, regardless of the will of the other party.
4. disputes between the parties of administrative and legal relations, as a rule, are resolved administratively.
5. Administrative and legal relations arising between executive authorities and other participants of the administrative law are not always relations carried out by the method of power and subordination.
6. Violation of the administrative-legal norm requirements by one of the parties of administrative and legal relations entails legal liability (Bytyak, 2010).

In view of the above, it can be argued that the relations in the sphere of the state tax policy in Ukraine are quite clearly defined and regulated at the legislative level (Leheza *et al.,* 2021).

However, the tax sphere has too close relations with other sectors of public life and has has an influence on these sectors. To effectively ensure the priority of taxpayers' rights and find effective mechanisms for well-timed formation of public funds, it is necessary to clarify and disclose the essence of legal relations arising in the sphere of realization of the state tax policy (Leheza *et al.,* 2021).

Legal regulation in the sphere of tax policy includes public service, law enforcement and jurisdictional activity of the state, which is aimed at satisfaction of human rights and legitimate interests. Such activity is aimed at ensuring a high quality of life for people throughout the territory of Ukraine, and at achieving an optimal balance between filling the budget and maintaining conditions for economic growth and improving social welfare. In general, the sphere of taxes affects the national interests of Ukraine. Thus, relations that arise in the sphere of taxation are of great importance.

Conclusion

Thus, relations in the sphere of regulating the state tax policy have the following features: these relations presuppose an obligatory participation of the state; they require corresponding actions of executive and administrative nature in order to be fulfilled; they may arise on the initiative of each of the parties, regardless of the will of the other party; disputes between the parties of legal relations, as a rule, are resolved administratively; and violation of the administrative-legal norm requirements by one of the parties of legal relations entails legal liability; relations arising between the executive authorities and other participants in legal relations in the sphere

of the state tax policy are not always relations carried out by the method of power and subordination.

Given the analysis of relations arising in the sphere of regulation of the state tax policy one can confidently assert that in their essence they are similar to the characteristics of administrative and legal relations. Thus, administrative, and legal norms form the basis for regulation of the state tax policy.

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Damage compensation mechanism in the criminal process

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Abstract

It discusses the problematic issues of consideration and resolution in a criminal case of a civil claim for compensation for property damage or compensation for moral damage caused by a criminal offense. The essence and content of the «civil claim in the criminal process» is determined, the advantages are noted, and the problems of a civil lawsuit in the criminal process of Ukraine are discussed. The authors propose to consider the filing of a civil claim as a right of the victim, corresponding to the obligation of the criminal prosecutor's office and the court to take measures for the timely reparation of damages. Some reasons are revealed that complicate the implementation of the principle of inevitability of civil liability for a crime committed simultaneously with the procedure for convicting the perpetrator. As a conclsuion se proposes to develop new approaches to the institution of a civil lawsuit in the criminal process of Ukraine, contributing to the improvement of the activities of the criminal prosecution authorities and the court to restore the violated civil rights of victims of crime.

Keywords: civil claim; victim; criminal procedure; compensation for damage; procedural actions.

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Mecanismo de indemnización por daños en el proceso penal

Resumen

Se analizan las cuestiones problemáticas de consideración y resolución en un caso penal de una demanda civil de indemnización por daños a la propiedad o indemnización por daño moral causado por un delito penal. Se determina la esencia y el contenido de la «demanda civil en el proceso penal», se anotan las ventajas y se discuten los problemas de una demanda civil en el proceso penal de Ucrania. Los autores proponen considerar la presentación de una demanda civil como un derecho de la víctima, correspondiente a la obligación de la fiscalía penal y del tribunal de tomar medidas para la reparación oportuna de los daños. Se revelan algunas razones que complican la implementación del principio de inevitabilidad de la responsabilidad civil por un delito cometido simultáneamente con el procedimiento para condenar al perpetrador. Como conclsuion se propone desarrollar nuevos enfoques para la institución de una demanda civil en el proceso penal de Ucrania, contribuyendo a la mejora de las actividades de las autoridades de enjuiciamiento penal y el tribunal para restaurar los derechos civiles violados de las víctimas de delitos.

Palabras clave: demanda civil; víctima; proceso penal; indemnización por daños; acciones procesales.

Introduction

In accordance with Art. 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on November 29, 1985 by UN General Assembly Resolution 40/34, victims of crime have the right to access the mechanisms of justice and prompt compensation for harm suffered in accordance with national law.

According to Art. 3 of the Constitution of Ukraine a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state (Constitution of Ukraine, 1996). In the context of reforming the legislation, in particular the criminal procedure, the implementation of constitutional provisions becomes especially important.

The protection of the rights and freedoms of the victim, the creation and functioning of a system of reliable legal guarantees to ensure the right

to justice and judicial protection in criminal proceedings are important. According to Art. 2 of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine), the main tasks of criminal proceedings are the protection of the individual, society and the state from criminal offenses, as well as protection of rights and freedoms and legitimate interests of participants in criminal proceedings. One of the legal means of protection of violated rights of victims is compensation (compensation) for damage caused by a criminal offense (Criminal procedure code of Ukraine, 2012).

Therefore, the independent task of criminal proceedings should be to ensure compensation for damage caused by a criminal offense. In addition, the procedural activities of persons and bodies conducting criminal proceedings should be aimed at successfully solving these tasks (Groshevii *et al.,* 2013).

It should be noted that the reform of Ukrainian legislation, including in the field of protection of victims of crime, is due to the need to bring it in line with international standards on human and civil rights. The International Covenant on Civil and Political Rights obliges the state to provide any person with an effective remedy in the event of a violation of his or her rights and freedoms. The right to protection for any person in need is guaranteed by the state, its competent judicial, administrative or legislative bodies (International covenant on civil and political rights, 1966). In addition, the victim's right to compensation (compensation) for the damage caused by a criminal offense is provided by a special European Convention on Compensation to Victims of Violent Crimes (European convention on compensation to victims of violent crimes, 1983).

We must also pay attention to the domestic, adopted for the implementation of international standards, the Concept of ensuring the protection of legal rights and interests of victims of crime, which was approved by the Decree of the President of Ukraine dated 28.12.2004 № 1560/2004. The concept indicates the need to develop new and improve existing legislation to protect the legal rights and interests of victims (International covenant on civil and political rights, 1966).

One of the most important factors determining the effectiveness of the restoration of violated rights is the timeliness of their protection. In criminal proceedings, the duty of the state to ensure adequate protection of the civil rights of victims of crimes is implemented by resolving claims for compensation for property damage or compensation for moral damage. Fundamental measures are needed to reduce the general crime in Ukraine, to clearly take into account the amount of not only material (property), but also physical and moral harm caused by crimes, the introduction of modern scientifically grounded methods, technical, organizational and other means aimed at the most effective restoration of the existing one before the crime, condition of a victim of a crime, a natural or legal person.

Given the difficult economic and socio-political conditions of recent years, we see an increase in the number of criminal offenses, as well as the fact that the problem of compensation for damage caused by crime requires a comprehensive scientific and practical study. All of the above emphasizes the relevance and significance of the study conducted by the authors.

1. Methodology of the study

The methodological basis of the study was the theory of knowledge of legal phenomena. Given the specifics of the topic and purpose of the study, the following methods are used in the article: dialectical method phenomena); method of integrated approach (for analysis of legal sources devoted to the researched problem); formally logical method of research (to define the concept and forms of compensation in criminal proceedings); comparative legal method (to analyze the rules of the current CPC of Ukraine in comparison with the rules of criminal procedure of other states; to analyze other views expressed in theory and practice to ensure compensation for damage caused by a criminal offense; formally legal method (to understand the essence and interpretation certain legal norms on the provision of compensation for damage caused by a criminal offense, to formulate definitions and conclusions), the method of legal analysis (to study and analyze current domestic and foreign regulations defining the principles of compensation).

2. Analysis of recent research

Problems of establishing and compensating for the damage caused by criminal damage have been the subject of research by such scientists as: V. Popelyushko (Popelyushko, 2020), Y. Groshevii, V. Tatsiy, A. Tumanyants (Groshevii *et al.,* 2013), V. Kovalenko, L. Udalova, D. Pysmenniy (Kovalenko *et al.,* 2013). O. Pchelina (Pchelina, 2011), I. Tataryn (Tataryn, 2015), Y. Chornous (Chornous *et al*., 2021), C. Roxin, B. Schünemann (Roxin and Schünemann, 1998), V. Dubrovin (Dubrovin, 2010) and others. A number of fundamentally important provisions formulated in their works. At the same time, issues related to the establishment and compensation of damages in criminal proceedings need further investigation.

The purpose of this article is to disclose the content of legal provisions relating to civil lawsuits in criminal proceedings and the current practice of their application, primarily the Supreme Court of Ukraine and the European Court of Human Rights (ECtHR), outline the implementation of the institution of compensation for criminal damage, offenses and providing proposals for improving criminal procedure legislation in this area.

3. Results and discussion

Legal science divides the damage caused by crime into three types: moral, physical and property (material). Moral damage as a consequence of the crime is intangible and, in accordance with Part 2 of Art. 23 of the Civil Code of Ukraine, is expressed: 1) in physical pain and suffering that an individual has suffered in connection with an injury or other damage to health; 2) in mental suffering that an individual has suffered in connection with illegal behavior towards himself, members of his family or close relatives; 3) in mental suffering suffered by an individual in connection with the destruction or damage of his property; 4) in humiliation of honor and dignity of a natural person, as well as business reputation of a natural or legal person (Civil code of Ukraine, 2003). Physical harm is the negative changes in the victim's physical and mental health caused by the crime, expressed in various degrees (death of a person, causing severe, moderate or light bodily injuries, mental disorders, changes in the normal development of the body, etc.) (Tataryn, 2012). Property damage is any reduction or destruction of a property subjective right protected by law of interest or property, which causes loss to the victim (Mitrofanov and Gaikova, 2012).

Compensation in criminal proceedings is subject to moral and property damage, as physical damage defined as a set of changes that have objectively occurred in the human condition because of a criminal offense. The components of physical harm include bodily injury, ill health, physical suffering, and therefore their actual compensation is impossible. The cost of restoring physical health calculated in monetary terms and is included in property damage. These are: the monetary costs of restoring the health of the victim, and in the event of his death – the burial and payments to maintain the material well-being and upbringing of disabled family members of the victim and his minor children; funds spent by the health care institution for inpatient treatment of a victim of crime (Kovalenko *et al.,* 2013).

Chapter 9 of the CPC of Ukraine provides for forms of compensation (compensation) for damage in criminal proceedings, namely: 1) voluntary compensation (compensation) for damage (Part 1 Art. 127); 2) filing a civil lawsuit (Part 2 Art. 127, 128, 129); 3) application for bail to enforce the sentence in part of property penalties (Part 1 Art. 177; Parts 4, 11 Art. 182); 4) compensation for damage to the victim caused by a criminal offense, at the expense of the State Budget of Ukraine (Art. 127, Part 2, Art. 3, Art. 572); 5) criminal-legal restitution (item 5 part 9, part 10 Art. 100; part 4 Art. 374); 6) compensation (compensation) for damage caused by illegal decisions, actions or omissions of the body carrying out operational and investigative activities, pre-trial investigation, prosecutor's office or court, in cases and in the manner prescribed by law (Article 130) (Criminal procedure code of Ukraine, 2012).

It should be noted that the institution of damages is an interdisciplinary institution: in addition to criminal procedural law, it is also provided by civil procedure law, which provides for a claim for damages in civil proceedings. This method of protection of violated property and personal non-property rights and legitimate interests of the victim can be implemented both before and after the criminal proceedings, in particular in cases of failure to file a civil lawsuit in criminal proceedings or leave it without trial.

An analysis of law enforcement practice shows that victims of crime do not always receive adequate compensation for the harm caused to them, and therefore their rights and legitimate interests are not fully restored. In domestic criminal proceedings, the restoration of violated rights and legitimate interests of victims, as a rule, is realized by a claim form of compensation for property damage or pecuniary damage, ie, by filing a civil lawsuit. In relation to this issue, scientific circles highlight a number of reasons for the weak protection of the victim of the crime in terms of compensation for damage. One of the reasons for the impossibility of fully restoring the rights and legitimate interests of victims is the lack of unambiguous understanding of the nature of civil proceedings by participants in criminal proceedings, and in particular by persons whose interests have been violated by the crime.

There is no longer any doubt that a civil action does not contradict a criminal case, and the resolution of a civil action in criminal proceedings is a higher priority than in civil proceedings. Thus, the jurisdiction and jurisdiction of a civil action are determined by the jurisdiction of the criminal case. Thus, a person recognized as a civil plaintiff in a criminal case is released from the need to participate twice in court proceedings, first in a criminal case, then in a civil case.

Thus, a civil action in a criminal case does not complicate the criminal process. The advantages of a civil action in a criminal case are obvious from the point of view of procedural economy and the completeness of the examination of evidence.

There is a discussion among scholars and practitioners about the expediency of expanding the grounds of a civil lawsuit in a criminal case; admissibility of the appearance of a civil plaintiff in a criminal case, when the amount of damage has not yet been precisely determined, and the person who committed the crime has not been identified; resolution of a civil claim when considering a criminal case in a special order of court proceedings; the competence of the courts to eliminate the shortcomings of the preliminary investigation in terms of civil lawsuits in criminal cases. These issues are “taste”, evaluative in nature and the lack of their unambiguous understanding among lawyers does not significantly affect the solution of the tasks set before the state to ensure judicial protection of the rights of victims of crime.

It seems that, despite the position of the victims, the state, as one of the subjects of criminal proceedings, is obliged to take measures to timely compensate for the damage caused to them as a result of the crime. In this regard, the filing of a civil action should be considered as a right of the victim, corresponding to the duty of the prosecuting authorities and the court to clarify such a right and ensure the real possibility of its exercise.

The exercise by victims of the right to bring a civil action in a criminal case directly depends on how complete the mechanism for exercising this right will be and how well the conditions for its exercise will be created. There is no doubt that the optimal conditions for ensuring the execution of a sentence in a civil action must be created immediately after the initiation of a criminal case, ie at the pre-trial stages of criminal proceedings.

Therefore, it is the persons carrying out criminal prosecution who are obliged to carry out procedural actions aimed at compensating for the damage caused: to take all measures provided by law to identify civil defendants and search for property to be recovered, seize property, etc. However, investigators interrogators, their leaders have mainly the necessary knowledge and some experience in the field of criminal and criminal procedure law. A civil action in a criminal case is based on civil law and must be considered through the prism of civil and civil procedural law.

Imbalance of public legal principles and private legal principles in criminal procedure, imperfection of the mechanism of compensation, some incompetence of prosecutors in matters of civil law disorient them and do not allow to take effective measures to restore violated civil rights.

The resolution of civil lawsuits in a criminal case is based on the establishment of such legal facts as the existence of a crime, the infliction of harm by a crime, the existence of a causal link between the crime and the harm caused.

Claims for pecuniary damage are resolved based on the amount of damage caused as a result of the crime, which is established during the preliminary investigation and checked during the trial. The resolution of claims for non-pecuniary damage is conditional on the nature of the suffering caused, the requirements of reasonableness and justice.

Claims for compensation for damage caused to the life and health of a citizen, due to their specificity due to the complex subject of evidence, are not considered in criminal proceedings and are fairly attributed to the scope of regulation of civil proceedings. Thus, a “civil action” in criminal proceedings should be understood as a procedural means of judicial protection of property rights and legitimate interests of victims of crime. Citizens or legal entities have the right to file a civil lawsuit in a criminal case if there are grounds to believe that they have suffered property damage as a result of the crime, as well as citizens in the event of moral and (or) physical suffering.

Compensation for non-pecuniary damage caused by property crimes is possible only in cases expressly provided by law. If the plaintiff's property rights have been violated in the criminal case and no violation of his non-property rights has been established, and the legislation does not provide for the possibility of compensation for non-pecuniary damage, the victim has no grounds to sue for compensation for non-pecuniary damage.

The question of whether it is possible to maintain in criminal proceedings the "presumption" of guilt of the defendant who caused the harm in criminal proceedings requires some clarification. In civil proceedings, the "presumption" of the perpetrator's guilt presupposes that the defendant himself must provide evidence of his innocence. The fact of causing harm, its size, the causal link between the act of the defendant and the harmful consequences is proved by the plaintiff. In criminal proceedings, the proof of a civil claim is made according to the rules of criminal procedure and taking into account the requirements of the principle of the presumption of innocence. Therefore, the decision on the issue of civil liability must also be based on the provisions of the presumption of innocence, that is, the "presumption" of guilt of the defendant in this case becomes meaningless and all irreconcilable doubts must be interpreted in his favor.

In our opinion, the burden of proving one's claims lies with the civil plaintiff, but there is no obligation to prove it, given that the law does not provide for any sanctions for non-fulfillment of such an obligation by the said party.

The institute of civil action in the Ukrainian criminal process is an extremely positive phenomenon, given at least that obtaining compensation for the damage caused to the victim by a criminal offense is for him almost more significant than the punishment imposed on the guilty. However, the filing, consideration, and resolution of a civil lawsuit in criminal proceedings has several advantages over if it took place in civil proceedings.

First, such a path is the shortest way to compensate for the damage, as the actual resolution of the claim in civil proceedings is possible only after the entry into force of a court decision in a case under criminal proceedings. Until then, civil proceedings in civil proceedings, even if the claim was filed during criminal proceedings, should be suspended (paragraph 6 of Part 1 Art. 251 of the Civil Procedure Code of Ukraine) (Civil procedure code of Ukraine, 2004).

This way, secondly, significantly facilitates the work of the civil plaintiff to prove the grounds, subject matter, and number of claims. In this case, both the grounds and the subject and amount of the claims are nothing but a criminal offense, the guilt of the accused in its commission and the amount and type of damage caused by the criminal offense, which have both substantive (criminal and civil) and procedural (criminal and civil-

procedural) nature, are the circumstances to be proved in criminal proceedings (paragraphs 1, 2, 3 of Part 1 Art. 91 of the CPC of Ukraine), and proving these circumstances by collecting, verifying and evaluating evidence is carried out, moreover, as the performance of criminal procedural duty by the investigator and the prosecutor, and by checking and evaluating the evidence also the court (Part 2 Art. 91, Art. 92-94 of the CPC of Ukraine).

Thirdly, when filing a civil lawsuit in criminal proceedings, the court fee is not paid, and if it is satisfied, the convict is not charged (the decision of the Supreme Court of Cassation in case № 187/291/17 of January 23, 2019). And fourth, the consideration of a civil lawsuit in this order gives procedural savings, because it eliminates its consideration in the order of civil proceedings (Popelyushko, 2020).

It should also be noted that the ECtHR has repeatedly emphasized in a number of decisions, including those against Ukraine, the benefits of a civil action in criminal proceedings, emphasizing that in criminal proceedings the civil aspect is so closely linked to the criminal aspect that the outcome of the criminal proceedings is crucial for the consideration of the civil claim, for the civil right of the applicant to compensation.

Therefore, such compensation is covered by the scope of paragraph 1 of Art. 6 of the Convention (cases: "Serdyuk v. Ukraine" of 20 September 2007; "Koziy v. Ukraine" of 6 November 2009; "Krivova v. Ukraine" of 9 November 2010). In the case of, for example, Ignatkin v. Ukraine of 21 May 2015, the ECtHR further stated that "the criminal proceedings were decisive for the applicant's right to compensation in civil proceedings" (§ 69), and emphasized: "in In cases concerning liability for actions that have caused serious damage to health, the authorities are obliged to act particularly carefully and carry out proceedings with special speed" (Case "Ignatkina v. Ukraine"of 21.05.2015).

In Part 1 Art. 128 of the CPC of Ukraine contains general provisions, which together with the corresponding provisions of other legal norms determine the subjects of the right to file a civil lawsuit in criminal proceedings, its grounds and subject matter, time of filing and civil defendants.

Thus, as a general rule, a civil lawsuit in criminal proceedings may be filed by a natural person who has suffered property and / or moral damage by a criminal offense or other socially dangerous act, a legal entity who has suffered property damage by a criminal offense or other socially dangerous act, and a legal entity to which property damage has been caused by a criminal offense or other socially dangerous act (Part 1 Art. 61 of the CPC of Ukraine). The claim must be filed during the criminal proceedings, and therefore after the pre-trial investigation (Part 2 Art. 214 of the CPC of Ukraine), but before the trial, it means before the examination of evidence, ie before the interrogation of the accused (Art. 351 CPC of Ukraine). From the

moment of filing a statement of claim to the body of pre-trial investigation or court, these persons automatically acquire the status of civil plaintiffs (Art. 61 of the CPC of Ukraine).

In the case of filing a civil lawsuit by the victim, both procedural statuses are combined in one person – the victim (Art. 55-57 of the CPC of Ukraine) and the civil plaintiff (Art. 61 of the CPC of Ukraine).

As for the method of compensation for property damage, at the request of the injured party, and according to the circumstances of the case, it may be compensated not only in cash but also in another way, in particular, may be reimbursed in kind (transfer of the same kind and the same quality, repair of the damaged thing, etc.), unless otherwise provided by law (Part 4 Art. 22, Part 1 Art. 1192 of the Civil Code of Ukraine).

Part 4 Art. 128 of the CPC of Ukraine stipulates that the form and content of the statement of claim must meet the requirements established for lawsuits filed in civil proceedings. Currently, the requirements for the form and content of the statement of claim are set out in Art. 175 Civil Procedure Code of Ukraine, where, in particular, states that in the statement of claim the plaintiff sets out its claims on the subject matter of the dispute and their justification, that the statement of claim is submitted to the court in writing and signed by the plaintiff or his representative, another person legally entitled to go to court in the interests of another person, and then its semantic elements are given.

The court is not entitled to properly file a civil lawsuit for resolution in civil proceedings, but is obliged to resolve it within the framework of criminal proceedings. Support of the declared civil claim in court finds its manifestation in substantiation by the civil plaintiff before court of claims for compensation and / or compensation of the damage caused to it by a criminal offense, and objection against the civil claim – in refutation by the civil defendant of the bases and / or the size presented to it, requirements, in connection with which they can actively use the rights granted to them by the criminal procedure law.

The civil plaintiff, in addition to the rights and obligations of the actual civil plaintiff, has the rights and obligations provided by law for the victim, in the part relating to the civil claim (Part 3 Art. 61 of the CPC of Ukraine), and the civil defendant – the relevant rights and obligations ties provided by law for the suspect, accused (Part 3 Art. 62 of the CPC of Ukraine). This means that they are granted equal procedural rights to state objections, petitions, give explanations, testimony, participate in the examination of evidence, appear in court debates, etc. (Art. 42, 56 of the CPC of Ukraine).

Specific, belonging only to the civil plaintiff is his right, due to the essence of the claim as the will of the person who filed a claim for compensation / compensation for the damage caused to him, which he has the right to

dispose of, is the right to support the civil claim or refuse to remove it, court in the deliberation room for a court decision (Part 3 Art. 61 of the CPC of Ukraine). And only the civil defendant has the right to recognize the claim in whole or in part or to object to it (Part 3 Art. 62 of the CPC of Ukraine).

With regard to the right of these participants in the trial to give explanations, testimonies, the explanations here should be understood as a way for them to inform the court of information about certain circumstances related to a civil lawsuit in cases where the civil plaintiff is not both a victim and a civil defendant. is not accused, because the CPC of Ukraine does not provide explanations of these persons as a source of evidence in criminal proceedings (Part 2 Art. 84, Part 1 Art. 95 of the CPC of Ukraine).

Explanation of civil plaintiffs and civil defendants under the CPC of Ukraine is one of their fundamental rights as participants in the case (paragraph 3 of Part 1 Art. 43 of the CPC of Ukraine), which is reduced to expressing their attitude in court to written, physical and electronic evidence or protocols their review (Part 5 Art. 229 of the CPC of Ukraine), to the testimony of witnesses announced in court (Art. 233 of the of Ukraine), to the means of supplementing the case file after the court clarifies all its circumstances and verifies the evidence (Art. 241 of the CPC of Ukraine), etc., ie in essence, they are one of their main means of proof in the trial of a civil claim, although they are not directly referred to the sources of civil procedural evidence by law (Art. 76 of the CPC of Ukraine). These persons testify when the civil plaintiff and the victim and, accordingly, the civil defendant and the accused act in the same person.

Participation in the trial is the right of the civil plaintiff. A civil action may be heard in the absence of the civil plaintiff, his representative or legal representative, if he has filed a request for consideration of the claim in his absence or if the accused or civil defendant has fully acknowledged the claim. If the civil plaintiff, his representative or legal representative in the absence of these conditions did not appear in court, the court leaves the civil claim without consideration (Part 1 of Art. 326 of the CPC of Ukraine).

In case of non-appearance at the court hearing at the summons of the civil defendant, who is not the accused, or his representative, the court, after hearing the opinion of the participants in the proceedings, depending on whether it is possible in their absence to clarify the circumstances of the civil lawsuit, conducting a trial without them or postponing the trial.

In this case, the court has the right to impose a fine on the civil defendant in the manner prescribed by chapter 12 of the CPC of Ukraine (Part 2 Art. 326 of the CPC of Ukraine). The civil plaintiff has the right in the manner prescribed by Art. 171 of the CPC of Ukraine, in order to secure a civil lawsuit, apply to the court for seizure of property. In the judicial procedure, a civil claim is considered in general according to the rules of

criminal prosecution (§ 3, chapter 28 of the CPC of Ukraine) and the rules concerning the consideration of the actual civil claim.

If he files such a claim in criminal proceedings, the opening of civil proceedings must be denied with the return of the statement of claim (Art. 185, paragraph 1, part 1 Art. 186 of the CPC of Ukraine). A person who has not filed a lawsuit in criminal proceedings, as well as a person whose civil lawsuit has been left without consideration in criminal proceedings, has the right to file it in civil proceedings (Part 7 Art. 128 of the CPC of Ukraine).

The law does not provide for the court to decide in criminal proceedings on the issue of compensation (compensation) for damage caused by a criminal offense or a socially dangerous act if a civil lawsuit has not been filed. If the subject of the criminal case together with the accusation (socially dangerous act of a minor or insane person) was a civil lawsuit, the court in the deliberation room when sentencing (ruling) must also decide whether to satisfy the civil lawsuit and if so, in whose favor, in what amount and in what order (paragraph 7 of Part 1 Art. 368 of the CPC of Ukraine).

The motivating part of the sentence (ruling) of the court must indicate the grounds for satisfaction of the civil claim or rejection, left without consideration, the reasons for the decision and the provisions of the law governing the court, and in the operative part – the decision on the civil claim (Art. 374 CPC of Ukraine).

In cases where the damage was caused by several persons, and in respect of some of them the criminal proceedings were closed at the pre-trial investigation or in the preparatory proceedings on the grounds provided for in Art. 284 and 314 of the CPC of Ukraine, it is charged by the court in full from the accused, who, in case of compensation, has the right of recourse (recourse) to the specified co-perpetrators of its task (Part 1 Art. 1191 of the Civil Code of Ukraine). In the case of establishing the absence of an event of a criminal offense, as stated in Part 2 of Art. 129 of the CPC of Ukraine, the court rejects the claim.

This means that the court rejects the claim when passing an acquittal on the grounds that: 1) the absence of a criminal offense (paragraph 1 of Part 1 Art. 284, paragraph 2 of Part 1 Art. 373 of the CPC of Ukraine); 2) it has not been proved that a criminal offense in which the person is accused has been committed (paragraph 1, part 1 Art. 373 of the of Ukraine); 3) it has not been proved that the criminal offense was committed by the accused (paragraph 2, part 1 Art. 373 of the CPC of Ukraine). Similarly, the court rejects the claim when closing criminal proceedings on the application of coercive measures of an educational nature to minors who have not reached the age of criminal responsibility, as well as on the application of coercive measures of a medical nature on the grounds that: 1) no socially dangerous act; 2) it has not been proved that the relevant socially dangerous act was

committed; 3) it is not proved that this person committed the relevant socially dangerous act (Part 1 Art. 284, Part 1, 2 Art. 501 of the CPC of Ukraine; Part 1 Art. 504, Part 3 Art. 513 CPC of Ukraine).

Leaving the claim without consideration in case of acquittal of the accused in the absence of a criminal offense in his actions (Part 3 Art. 129 of the CPC of Ukraine) should occur in cases where criminal proceedings are decided on the grounds if: 1) it is not proved that the accused criminal offense (paragraph 3 of Part 1 Art. 373 of the CPC of Ukraine); 2) the absence in the act of a criminal offense (paragraph 2 of Part 1 Art. 284, paragraph 2 of Part 1 Art. 373 of the CPC of Ukraine).

Such a solution to this issue in a criminal case allows the victim to compensate for the damage caused to him in civil proceedings, as it allows to prove the illegality of the act of the acquitted, which entails tort liability under the relevant rules of civil law.

But a civil claim may be considered in the absence of the civil plaintiff, his representative or legal representative, if he received a request for consideration of the claim in his absence or if the accused or civil defendant fully acknowledged the claim (paragraph 2, part 1 Art. 326 CPC of Ukraine). For any other reason, the court has no right to leave the claim without consideration when passing a guilty verdict (Resolution of the Supreme Court of Cassation of 16.05.2019 № 462/5779/15-k).

The above should also be applied by analogy in criminal proceedings concerning the application of coercive measures of an educational nature to minors who have not reached the age of criminal responsibility (§ 2 of Chapter 38 of the CPC of Ukraine) and the application of coercive measures of a medical nature (Chapter 39 of the CPC of Ukraine).

A person who has not filed a civil lawsuit or whose civil lawsuit has been left without consideration must be explained the right to file it in civil proceedings (Part 7 Art. 128 of the CPC of Ukraine).

Thus, filing a civil lawsuit in criminal proceedings provides the fastest restoration of property rights of a victim of a criminal offense, and is the most effective way to eliminate the negative consequences of a criminal offense, as it provides the fullest restoration of the victim's rights compared to other (non-litigation) injured. An important role in bringing and maintaining a claim on behalf of the victim belongs to the prosecutor, who can effectively enforce the victim's right.

As noted by O. Pchelina, forensic support for establishing the amount of damage and its compensation is to develop appropriate scientific and practical recommendations, forensic tools and technologies for their use by law enforcement and judicial authorities to optimize and facilitate activities to ensure compensation for damage caused by criminal offenses (Pchelina, 2011).

The first step in order to establish and compensate for the damage is carried out by the bodies conducting the investigation, because this task is directly provided in Art. 91 of the CPC of Ukraine, as a circumstance subject to proof in criminal proceedings. Thus, paragraph 3 of Part 1 of Art. 91 of the CPC of Ukraine establishes that in criminal proceedings the type and amount of damage caused by a criminal offense (Criminal procedure code of Ukraine, 2012) is subject to proof.

It is worth agreeing with E. Videnko that the type of damage and its amount, expressed in property (monetary) equivalent, is the subject of a civil lawsuit. In addition, proving the type and amount of damage caused in criminal proceedings involves not only the justification of a civil lawsuit for damages, but is primarily of criminal law significance. This can be explained by the fact that the amount of damage belongs to the objective side of the criminal offense, determines the degree of it's social danger, and often the criminal qualification (Videnko, 2014).

I. Tataryn proposes to understand the provision of damages at the stage of pre-trial investigation procedural activities of prosecutors, investigators and on their behalf procedural and operational-search activities of operational units, aimed at taking the necessary measures to search, identify property and other valuables and initiate a petition to the investigating judge seizure of such property in order to secure the civil claim filed in criminal proceedings.

Necessary measures to ensure a civil lawsuit at the stage of pre-trial investigation of criminal proceedings should be: a) the correct determination of the amount and amount of damage caused to the victim; b) search, detection and return of stolen property preserved in kind; c) detection of destroyed or damaged property and ensuring the return of lost property in kind or its monetary equivalent in full; e) ensuring full reimbursement to the victim of the value of the stolen property in case of impossibility of its return; d) ensuring compensation for other damage caused by a criminal offense; e) seizure of property, other valuables in order to compensate for the damage caused by a criminal offense; f) preservation of property and other valuables necessary for the execution of a court decision in case of satisfaction of a claim for compensation for damage caused by a criminal offense (Tataryn, 2015).

In order to ensure compensation for the damage caused by the crime, the bodies investigating it are obliged to establish: 1) the location of property, cash and non-cash funds, as well as other valuables obtained by criminal means; 2) the presence and location of movable and immovable property, cash and non-cash funds, other valuables belonging to the suspect on the right of ownership; 3) the suspect has rights to certain types of property or profit from the activities of relevant enterprises. Part 2 Art. 170 of the CPC of Ukraine stipulates that the investigator and prosecutor must take

the necessary measures to identify and search for property that may be seized in criminal proceedings, in particular by requesting the necessary information from the National Agency of Ukraine for Detection, Search and Management of Corruption Assets, and other crimes, other state bodies and local governments, individuals and legal entities (Criminal procedure code of Ukraine, 2012).

Given the mechanism of committing certain offenses, in order to ensure compensation for damage, there is a need for international cooperation with foreign law enforcement agencies and international law enforcement organizations. After all, firstly, international business entities may be involved in committing criminal offenses, and secondly, criminal income, money and property of the suspect are taken out of Ukraine.

However, in addition to requesting the necessary information from state bodies by persons investigating corruption crimes, information on objects that have been acquired by criminal means or other objects that can be used to provide compensation for damage is found during investigative (search) and covert investigative (search) actions. This may be information obtained during the interrogation of witnesses and the suspect, various documents found during inspections and searches, draft records with relevant information, as well as information obtained during the arrest and inspection of correspondence, removal of information from transport telecommunications networks and electronic information systems, inspection of publicly inaccessible places, housing or other property of a person, control over the commission of a crime.

After establishing the presence and location of these objects, law enforcement agencies must take all possible measures to return the objects obtained by criminal means, seize the suspect's property in order to prevent his alienation or concealment by the suspect.

A measure of securing a civil claim in a criminal case is the seizure of the property of the accused or persons who are legally liable for his criminal actions, or other persons who have property acquired by criminal means.

It should be noted that the procedural activities aimed at ensuring compensation for damage caused by a criminal offense, is most effectively implemented by conducting tactical operations aimed at solving this problem. It is worth agreeing with I. Tataryn that such tactical operations can include the following: 1) "Establishing the nature and extent of damage caused by a criminal offense"; 2) "Search for stolen property"; 3) "Identification and seizure of stolen property"; 4) "Identification of persons who bear property responsibility for the caused damage, and their involvement in criminal proceedings as civil defendants"; 5) "Search, identification of property subject to seizure, and appeal to the investigating judge for the purpose of seizing such property"; 6) "Preservation of seized property" (Tataryn, 2015).

Thus, the establishment and provision of compensation for damage caused by a criminal offense is carried out in the course of the entire investigation by investigators, prosecutors and, on their behalf, by operatives. Such activities include a significant number of overt and covert investigative (search) actions that are best implemented through tactical operations. In order to ensure compensation, Ukrainian law enforcement agencies may, within the framework of international cooperation, use the assistance of international law enforcement agencies and law enforcement agencies of other states, as well as cooperate with the National Agency of Ukraine for Detection, Investigation and Management of Corruption and Other Criminal Offenses. The final decision on compensation for damage caused by a corruption crime is made by the court.

As evidenced by the investigative and judicial practice, the resolution of a civil claim in criminal proceedings causes a lot of difficulties. For example, there is a negative trend that prevents adequate compensation for the harm caused to victims of crimes.

This is the lack of motivation on the part of the criminal prosecution authorities, the desire to shift the function of investigating the crime to the courts. It is indisputable that clarification of the right to file a civil claim, recognition as a civil claimant, involvement as a civil defendant, taking measures to secure the claim, familiarization of the civil claimant, civil defendant and their representatives with the materials of the criminal case is additional work for the preliminary investigation bodies. Therefore, the investigators, in order to avoid unnecessary worries, offer the victim to file a claim in court.

As a result, in criminal cases sent to the courts, often not all persons in respect of whom the fact of harm has been established are recognized as victims. Measures have not been taken to search for and arrest the property of the suspect, the accused or persons bearing financial responsibility. The indictments do not contain information about the civil plaintiff, if there is one at the stage of the investigation of the crime. The value of the stolen or damaged property has not been confirmed by appropriate evidence. When a crime is committed against several victims, there is no information about the amount of damage caused to each of them. The accused have not been explained the provisions of the law on the recognition of voluntary compensation for property damage and moral harm as a mitigating circumstance.

Criminal procedural legislation allows for the possibility of filing a civil claim before the end of the judicial investigation in a criminal case in the court of first instance. The court may explain to the victim his right to bring a civil claim at the preliminary hearing and in the preparatory part of the trial, as well as, if there are grounds for that, to take measures to secure a civil claim. However, the load on the courts is growing every year. The local

specialization of judges for civil lawyers and criminologists is increasingly being established, considering only civil or only criminal cases, respectively.

The quality of justice is determined by the number of canceled or changed decisions. Incorrect resolution of a civil claim in a criminal case entails the cancellation of the verdict in this part by the court of appeal. Due to the unresolvedness of a number of theoretical issues, the compensation by judges of the shortcomings admitted by the preliminary investigation bodies in terms of civil claims may lead to an expansion of the existing model of conditionally changeable (conditionally rigid) limits of judicial proceedings, including due to the emergence of new participants in criminal proceedings (civil lawsuits), plaintiff, civil defendant and their representatives).

Therefore, judges in the courts of criminal jurisdiction, in order to avoid judicial errors, not wishing to violate the principles of adversariality and equality of parties, do not always resolve civil claims in criminal cases. In turn, as noted earlier, the resolution of civil claims by civil judges is much slower. The sums recovered by the courts are purely symbolic. This causes obvious discontent among the victims, gives rise to an opinion about the indifference and indifference of the judiciary to their fate, the unwillingness of the courts to protect violated rights.

In conclusion, we note that the restoration of social justice in criminal proceedings requires neutralization of the consequences of a specific crime. Having provided for the possibility of filing a civil claim in a criminal case, the legislator, proceeding from the connection of the harm caused with a criminal act, pursued the goal of most effectively protecting the subjective civil rights of victims and ensuring their prompt access to justice.

In practice, the implementation of this goal is not yet highly effective and does not meet public expectations. Interesting in this case is the legislation on compensation to victims of damage caused by crimes in some foreign countries. For example, as we know, the Criminal Procedure Code of the Federal Republic of Germany does not contain the concept of "civil action". However, according to Section 3 of Book 5 of the Criminal Procedure Code of the Federal Republic of Germany "Payment of compensation to victims", compensation for damage is carried out by the court when the victim or his heir makes a corresponding request (Roxin and Schünemann, 1998).

If the harm remains uncompensated at the expense of the perpetrators, then the Law on Payment of Compensation to Victims of Violence is applied. According to this Law, which has been in force for more than 35 years, individuals who have suffered bodily, mental or mental harm as a result of the commission of intentional violent crimes, as well as close relatives, if the violent act immediately or later led to the death of the victim, have the right to state compensation for this, harm in the form of cash benefits (Gesetz über die Entschädigung für Opfer von Gewalttaten).

A similar mechanism has been successfully functioning for a long time in the United States of America, Great Britain, France, Austria, Finland, and other foreign countries (Dubrovin, 2010). All this testifies to the need to develop in Ukrainian legislation new scientific approaches to the institution of a civil claim in a criminal case, prompted, inter alia, by international experience. Otherwise, certain articles of the Constitution of Ukraine will be declarative in nature, not ensuring the restoration of violated civil rights of victims of crimes and the solution of preventive tasks of criminal proceedings.

Conclusions

The logical conclusion of the content of the scientific article are the corresponding conclusions made as a result of research of problematic issues:

- The main forms (methods) of realization of the right of victims to compensation of the damage caused by a criminal offense are a civil claim, criminal-legal restitution and voluntary compensation of the guilty of the caused damage.
- Under the provision of compensation for damage from a criminal offense at the stage of pre-trial investigation should be understood: procedural activities of investigators, prosecutors and on their behalf procedural and operational-investigative activities aimed at taking the necessary measures to search, identify property and other valuables and petition the investigating judge seizure of such property in order to secure the civil claim filed in criminal proceedings.
- Necessary measures to ensure a civil lawsuit in criminal proceedings are: correct determination of the amount and amount of damage; search, detection and return of stolen, destroyed or damaged property; ensuring full reimbursement of the value of stolen property in case of impossibility of its return; ensuring compensation for other damage caused by a criminal offense; seizure of property, other valuables in order to compensate for the damage caused by a criminal offense; preservation of property and other valuables necessary for the execution of a court decision in case of satisfaction of a claim for compensation for damage caused by a criminal offense.
- The decisions of the courts considered in the article indicate the presence of problematic issues when filing a civil claim in civil and criminal proceedings. The realization of the rights of victims related to compensation for material damage and moral harm depends

on the timeliness of filing claims, the correct determination of jurisdiction and mandatory compliance with the relevant grounds and conditions imposed by the criminal procedural legislation to a civil claim. Given the constant variability of judicial practice in resolving a civil lawsuit in criminal proceedings, in addition to strict compliance with the relevant provisions of procedural and substantive laws, it is necessary to take into account the case law of the Supreme Court of Ukraine and the ECtHR.

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Use of certain special knowledge in the investigation of murders

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Abstract

The article analyzes the current problems of using certain special knowledge in the investigation of murders. The essence and basic forms of special forensic knowledge (participation of a specialist in conducting investigative (search) actions, consultations of specialists, conducting forensic examinations) used in the process of investigation of these criminal offenses are determined. Emphasis is placed on the expediency of more frequent use of such types of expertise as phonoscopic, soil science and handwriting, the theoretical foundations and methodological basis of which need to be updated and adjusted to take into account the latest techniques and leading world practices. It is concluded that the level of development of relevant methodological recommendations in Ukraine in the field of phonoscopic, soil science and handwriting, their lack of focus on today's problems of investigative and judicial practice. The solution to this problem will be facilitate by the development at the state level and updating of the training program for novice experts, which should include a thorough study of both classical and modern methods and techniques, advanced foreign experience, which will expand the professional worldview research

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in proving the circumstances of committed criminal offenses, including murder.

Keywords: special knowledge; murder investigation; phonoscopic; soil science; handwriting.

Utilización de ciertos conocimientos especiales en la investigación de asesinatos

Resumen

El artículo analiza los problemas actuales del uso de conocimientos especiales en la investigación de asesinatos. Se determina la esencia y las formas básicas del conocimiento forense especial (participación de un especialista en la realización de acciones de investigación (búsqueda), consultas de especialistas, realización de exámenes forenses) utilizados en el proceso de investigación de delitos penales. Se hace hincapié en la conveniencia de un uso más frecuente de tipos de conocimientos especializados como la balística, la ciencia del suelo y la escritura a mano, cuyos fundamentos teóricos y metodológicos deben actualizarse y ajustarse para tener en cuenta las últimas técnicas y prácticas de vanguardia. Se concluye que el poco nivel de desarrollo de las recomendaciones metodológicas relevantes en Ucrania en el campo de la balística, la ciencia del suelo y la escritura a mano, demuestran la falta de enfoque en los problemas actuales de la práctica judicial e investigadora. La solución a este problema se verá facilitada por la actualización del programa de capacitación para expertos novatos, que debe incluir un estudio exhaustivo de métodos y técnicas clásicas y modernas, experiencia internacional avanzada, que ampliará la cosmovisión profesional.

Palabras clave: conocimiento especial; investigación de asesinatos; balística; ciencias del suelo; caligrafía.

Introduction

Article 3 of the Constitution of Ukraine declares that a person, his life and health, honor and dignity, inviolability and security are recognizing as the highest social value (Constitution of Ukraine, 1996). In the modern period, the judicial and law enforcement system is being reform, measures are take to increase the efficiency of the National Police of Ukraine, a high-quality law enforcement service is create, and effective mechanisms for combating crime are being proposed. Changes in the socio-political and

economic sphere of the country have not only positive changes, but also some negative trends: lowering the level of social security, criminalization of certain segments, increasing registered unemployment, senseless manifestations of aggression and cruelty. There are changes in the structure of criminal activity and the emergence of new criminal manifestations, an increase in serious violent crimes. In this sense, there are some difficulties in counteracting serial (cell) killings (Kupyansky, 2016).

Given the acquisition of new and particularly dangerous forms of criminal activity, on the one hand, and the reform of criminal justice, adaptation of Ukrainian legislation to the European - on the other, the issue of analysis of theoretical basis and study of forensic practice is relevant (Simakova-Efremyan *et al.*, 2007) to identify problematic issues that exist in the investigation of murders, and on this basis - to develop ways to solve these problems. After all, there is no doubt that some knowledge of experts is increasingly in demand during the pre-trial investigation and trial of criminal proceedings for crimes of this kind. In this aspect, one of the most important tasks is to determine the nature and capabilities of certain types of expertise in the investigation of murders. This is what determines the need and relevance of such research.

1. Methodology of the study

The methodological basis of the scientific article is the theory of cognition and methods of cognitive activity. Research methods are represented by a system of general scientific and special scientific methods, which are selected in accordance with the topic, purpose and objectives of the article. The following methods were used in the work: dialectical (to outline the general concept and structure of the study; formal legal (to analyze the rules of criminal procedure and other regulations related to the peculiarities of the appointment and examination); dogmatic (legal) and method of analysis of definitions - to deepen the understanding of the definition of special knowledge, firearms, soil science and handwriting, functional (to determine ways to optimize the use of special knowledge in phonoscopic, handwriting and soil science in the investigation of killings, and experts, organizational and other activities), historical (to study the development of scientific ideas about the possibility of using certain expert research in the investigation of murders), sociological (in order to study and generalize investigative and judicial practice on the use of special knowledge during homicide investigations).

2. Analysis of recent research

The theoretical basis of the study of the problem of using special knowledge in the investigation of murders were the fundamental works of M. Saltevsky (Saltevsky, 2005), V. Cirkal (Cirkal, 1984), V. Goncharenko (Goncharenko, 1980), V. Loginov (Loginova, 2009), S. Cherniavskyi (Cherniavskyi, 2017), E. Simakova-Efremyan (Simakova-Efremyan, 2017), M. Kostenko (Kostenko, 2006), S. Kustanovich (Kustanovich, 1956), V. Mitrichev (Mitrichev, 1980), T. Averyanova, E. Rossinskaya (Averyanova and Rossinskaya, 1999), T. Tatarnikova (Tatarnikova, 2016) and other scientists.

However, to date, some aspects of the practical nature have not been sufficiently elucidated, in particular these issues related to the possibilities of conducting such examinations as phonoscopic, handwriting and soil science in the investigation of murders. In view of this, there is a need for a detailed theoretical analysis of these insufficiently studied types of examinations. In addition, science (as well as society) is constantly evolving, improving the scope of human activity, there are new ways to influence the life and health of the person, which requires the introduction of new types of forensic examinations, improving the methodology of their conduct.

The purpose of the article is to reveal the theoretical provisions and practical recommendations for the use of certain special knowledge in the investigation of murders. According to the defined purpose of the scientific article, the tasks are: definition of the concept and «special knowledge» used in the investigation of murders; obtaining a general idea of the forms of special knowledge used in the investigation of crimes in this category; outlining the features of phonoscopic, handwriting and soil science examination in the investigation of murders.

3. Results and discussion

3.1. General characteristics of special knowledge used in criminal proceedings

The interpretation of “special knowledge” is currently debatable. This is facilitating by the lack of a legislative definition of the concept of special knowledge and the legislator indicates only the purpose and subject of application of special knowledge.

It is widely believed in the doctrine that the term “special knowledge” used in criminal procedure law in the sectoral legal sense to distinguish well-known knowledge from the professional knowledge of professionals used, when necessary, in the investigation of crimes” (Cirkal, 1984). Under

special knowledge M. Saltevsky understood constantly improved acquired knowledge, skills and abilities used in any field of human activity, obtained in the process of special education, experience and practical activities (except for the professional knowledge of investigators), necessary for rapid and complete disclosure and investigation of the crime, as well as consideration of the case in court (Saltevsky, 2005). V. Goncharenko in his monograph notes that "special knowledge is knowledge in science, technology or art, used to obtain evidence by specially trained persons" (Goncharenko, 1980: 114).

We suggest that the special forensic knowledge used in the investigation of murders include information on forensic tools and methods of detection, recording, seizure and investigation of material traces of these crimes and other material evidence used in the course of expert, investigative or judicial activities, enshrined in various material sources, carriers of this information.

Special knowledge in the detection and investigation of criminal offenses used in two forms: procedural and non-procedural. The main purpose of their application is timely obtain from the specialist forensic information relevant to the investigator, which allows you to correctly choose the order, time and place of investigative (investigative) actions and covert investigative (investigative) actions, select its participants, scientific and technical means, choose tactics and properly navigate the situation. Cases of intentional and unintentional deprivation of life are not an exception in this aspect.

Experts and specialists apply special knowledge in a certain field, and the investigator, prosecutor and investigating judge use it in the form of involving a specialist in conducting investigative (search) actions, appointing forensic examinations, providing advisory assistance and more. The main purpose of involving a specialist is to expand the practical capabilities of the investigator, prosecutor in identifying, seizing and recording evidence during investigative (search) actions to establish the circumstances to be establish in criminal proceedings. The activity of an expert differs significantly from the activity of a specialist in that the expert is a special procedural figure, and the task of the examination is to analyze certain data in order to establish new facts relevant to the pre-trial investigation. In addition, the expert's opinion has probative value.

The main subject of application of special knowledge in the form of forensic examination is an expert. Procedural status, rights, responsibilities, the role of the expert, certain requirements and guarantees of his independence, responsibility are defined by the Criminal Procedure Code of Ukraine (Criminal procedural code of Ukraine, 2012), Instruction on appointment and conduct of forensic examinations and expert examinations, approved by the Order of the Ministry of Justice of Ukraine dated 08.10.1998 № 53/5

(Instruction on appointment and conduct of forensic examinations, 1998), Regulations on the service of the Ministry of Affairs of Ukraine, approved by the Order of the Ministry of Internal Affairs of Ukraine dated 03.11.2015 № 1343 (Regulations on the expert service of the ministry of internal affairs of Ukraine, 2015).

According to Art. 1 of the Law of Ukraine «On forensic examination», forensic examination is a study based on special knowledge in the field of science, technology, art, craft, etc. of objects, phenomena and processes in order to provide an opinion on issues that are or will be subject to trial (Law of Ukraine «On forensic examination», 1994).

Procedural grounds for the examination are defined in Article 242 of the Criminal Procedure Code of Ukraine, according to the first part of which the examination is conducted by an expert at the request of a party to criminal proceedings or on behalf of an investigating judge or court, if special circumstances knowledge. The factual basis for the appointment of an examination is the need for scientific, technical or other special knowledge that is needed to address certain issues in criminal proceedings (Criminal procedural code of Ukraine, 2012). The results of the examinations are made out by the expert's opinion, which must meet the criteria of belonging, admissibility and reliability.

Forensic science has a strong evidentiary value in the process of investigating murders and uses a wide arsenal of modern methods and scientific and technical means that significantly expand the possibilities of obtaining evidentiary information. According to the results of the study of criminal proceedings, we have identified the following shortcomings in the appointment of forensic examinations in the investigation of murders: inaccurate questions to the expert; errors during the seizure, packaging and storage of physical evidence, which are then submitted for expert examination; untimely appointment of forensic examinations; lack of knowledge and information about (new) types of forensic examinations, their capabilities and features of appointment. To avoid such shortcomings, it is necessary to consider the types, possibilities and significance of forensic examinations that may be assigned during the investigation of cases of deprivation of life.

The following types of examinations are important in the investigation of crimes of this category: forensic, forensic psychological, dactyloscopic, trasological, ballistic, cold steel, complex forensic, phonoscopic, immunological, cytological, genetic, odorological, handwriting, soil. For example, if it is necessary to study the state of the accused, which affects his consciousness and actions, and the time of the crime, to determine the various properties of the mental state or other individual psychological characteristics of the victim, suspect or witness during the pre-trial investigation may be appointed forensic expertise.

The decision of the forensic psychological examination is to find out from the suspect the state of affect at the time of the crime. According to statistics, forensic medical examination is most often carried out, the importance of which is that in the process of its conduct a causal link is established between the actions of the suspect (accused) and the negative consequences that caused the death of a person. Forensic medical examination establishes the cause of death, the presence of injuries, severity, nature, mechanism, location, method and duration of their formation, prediction of negative consequences and more.

These and other examinations are typical, such that are studied in detail in the scientific literature, so we consider it appropriate to focus on the possibility of forensic examinations, which are rarely appointed by investigators in the investigation of murders, because their capabilities and evidence are often unfairly ignored. practice. These include phonoscopic, handwriting and soil expertise.

3.2. Examination of audio and video recording

Intensive filling of public life with various technical means of communication has actualized the development of examination of audio and video recording. To date, the expert's report is evidence in criminal proceedings related not only to extortion, blackmail, corruption and terrorism, but also to murder, attempted murder, other crimes against life and health, etc. Examination of audio and video recordings belongs to the class of forensic examinations. Within the limits of expert specialties the main tasks of examination of sound and video recording are carrying out of technical examination of materials and means of sound and video recording; research of the speaker on physical parameters of oral speech, acoustic signals and environments; linguistic study of oral speech.

The essence of examination of materials and means of digital sound recording is to use an integrative set of special knowledge in the field of phonoscopy to investigate traces of sound, mechanism and methods of its reflection and fixation on digital media, properties of sound information reflected in the sound signal. Forensic examination of video recording is carried out in order to identify a person on the basis of voice and speech, as well as to identify the means of recording (video recording) (Averyanova and Rossinskaya, 1999).

In connection with the above, T. Tatarnikova proposed the following definition of the subject of examination of materials and means of digital sound recording - is the establishment of instructions of the parties to criminal and civil proceedings facts and circumstances related to the laws of formation and study of reflections of audio information on digital media value for proof. The content of the subject of examination of materials and

means of digital sound recording taking into account its procedural and epistemological aspect is the study of specific properties of objects of sound origin, their relationship with the phenomena of reality and functionally related processes, carried out within the current legal norms a set of methods for obtaining evidentiary information in criminal proceedings (Tatarnikova, 2016).

In the investigation of murders, the tasks of examination of materials and means of digital sound recording according to the methodological principle are divided into three main blocks: identification; diagnostic; classification. Identification tasks of examination of materials and means of digital sound recording are directed on identification of object on its display. Identification tasks are related to: the identification of specific sources of sound traces other than voice and speech signals with the identification of the person by voice and speech, recorded on the phonogram; less often - with the identification of a specific means, reception, transmission and recording of an audio signal, etc.

Diagnostic tasks are aimed at: differentiating the participants of the conversation on the basis of voice and speech, which differ; establishing the suitability of the speech signal for identification examination; clarification of the textual content of the proclaimed statements; establishing the fact of an unusual state of the speaker. Classification tasks are: diagnostics of terrain or acoustic characteristics of the room according to the properties of the sound environment; diagnostics of acoustic information sources, etc. In the investigation of murders, the specified tasks of examination of materials and means of digital sound recording can be detailed for each stage of examination.

It is known that the effectiveness of the detection and investigation of crimes is directly dependent on the successful interaction of pre-trial investigation bodies, operational units, expert service. Criminal proceedings for murder are no exception in this respect. Most often, the results of forensic examination of audio and video recordings, on the basis of which the persons involved in the commission of crimes are identified, are the only direct evidence in criminal proceedings (Maksymenko, undated). We consider it expedient to detail some problems of interaction of the specified subjects from the position of the forensic expert who solves a problem on revealing of the useful speech information at performance of forensic examination of video, sound recording at investigation of murders.

For a more detailed study of the means and materials of video recording, their preliminary research is often carried out. As a result, additional information can be obtained, which allows you to write the following questions: put forward new and check existing investigative versions; build tactics for conducting separate investigative actions; to decide on the involvement of the object in the case as verbal evidence, on the appointment of a forensic examination.

One of the important conditions for the preliminary study of physical evidence is the use of such methods that ensure the preservation of physical evidence in its original form. Preliminary research is usually the logical conclusion of the review. After examination and preliminary examination of the physical evidence, the question of the appropriateness of the appointment of the examination is raised. In the decision when appointing a forensic examination of the means and materials of the video recording in the investigation of the murders, the investigator may reflect the following questions: what is the content of the plots of the video presented for investigation; whether this video was made using the presented device; whether the presented video contains signs of editing; whether the image and sound were recorded simultaneously on the presented video, and so on.

When selecting an expert for the examination of means and materials of video recording in such high-profile criminal proceedings, the competence of the future expert in the field of criminology, television, video equipment is taken into account. It should also be remembered that if the expert concludes that the samples of voice and speech of the person do not meet the requirements, the expert sends a request to the initiator to provide additional samples of voice and speech of the person, which significantly affects the time of examination (Law of Ukraine «On forensic examination», 1994).

It should also be noted that one of the methods that is actively used by psychologists-experts in their work is the method of «Forensic psychological examination of the communicative activity of a person recorded in the video». It allows you to fully determine the features of speech behavior of the subject (Khalyavka and Tulvinskaya, 2020: 145).

Thus, we conclude that the examination of audio and video recordings is essential for the investigation of murders, in particular for establishing the criminal event, the identity of the murderer, the degree of his guilt and other circumstances to be proved. In order to optimize the progress of the homicide investigation before the examination, an expert should be consulted on the optimal wording of the questions regarding the speech and video material to be investigated.

3.3. Forensic soil expertise

One of the sources of evidence in the investigation of criminal offenses against the life and health of a person may be the opinion of an expert on the results of forensic examination. It belongs to the kind of examinations of materials, substances and products, in which the research of material evidence of soil and geological-mineralogical origin is carried out.

Forensic examination is a multi-stage comprehensive study, and the assessment is conducted after each stage of the study, taking into account

knowledge in the field of soil science and related sciences (natural science assessment) and in forensics (forensic assessment). Natural science assessment is carried out in terms of classification, taxonomy and other structural units of soil science, geology, biology and other sciences. Forensic assessment involves the transformation of the results of scientific assessment in accordance with special knowledge in the field of forensic identification theory.

With the help of forensic soil examination, identification, diagnostic and situational tasks are solved. Identification of the site is one of the main tasks of forensic soil examination. Among the facts that can be established by solving the problems of this type of examination are such important elements of evidence as identification of the area where the criminal event took place, and the fact of contact interaction of any objects contaminated with soil, diagnosis of an unknown scene and so on.

Objectivity, comprehensiveness and completeness of expert research means an unbiased assessment of the properties of objects and phenomena, conducting research on a scientific and practical basis, which eliminates errors, avoiding unreasonable judgments or expanding the subject of examination. The expert's opinion should be based on the provisions that allow to verify the validity and reliability of conclusions made on the basis of special knowledge in soil science, geology, petrography, mineralogy, chemistry, physics and other sciences, which are used in this type of examination.

At one time V. Mitrichev introduced into the examination of materials of substances and products the concept of «element of the material situation», which can be understood as a separate material object that is part of the material situation of the event under investigation: object (whole), material formations in the form of liquid, loose or gaseous substances, as well as their parts and traces (Mitrichev, 1980). By their nature, material evidence is material objects that arose in connection with the event of a criminal offense or were used during its commission, preparation for it, etc.

Based on this, the objects of study in the appointment of forensic soil examination may be a variety of objects of soil and mineral origin - it is directly soils, in the form of clay, sand, gravel, limestone, chalk, gypsum, coal, slag, etc., and in in the form of layers on the objects-carriers, exfoliations left at the scene, as well as samples of specifically localized areas.

The specificity of soil-geological objects as elements of the material situation in the framework of forensic identification research is determined by the actual circumstances of the offense (Omelyanyuk, 2004).

The soil-geological object submitted for forensic examination has a dual structure: it contains elements that determine its natural origin, as well as others that separate it as a material formation from various soil-geological and sometimes anthropogenic components.

V. Koldin points out that depending on the level of individualization achieved in the process of research, genus, species, group and individual identification differ. The ultimate goal of identification is to address the question of the identity of a single person, object, material complex (Koldin, 2002).

However, this goal is not always achieved. If the comparative study reveals only classification features, the study is limited to generic identification. In some cases, the structure of the identified object reveals properties that arose in the circumstances of a particular case or mechanism of the event under investigation. Such properties may be the basis for the allocation of special classes or groups that significantly deepen the levels of group identification. Individual identification requires the identification of features, the set of which is unique, inimitable. Thus, the identity of objects in the assessment of forensic soil examination is assessed by generic, group and individualizing characteristics.

Studying the methods of investigating crimes against life, V. Kolmakov distinguished between the method of committing a crime and the method of concealing it. Thus, to the first he attributed the actions and omissions aimed at achieving a criminal result, as well as the material objects with which the crime was committed, the conditions convenient for the offender. The method of concealment was considered by the researcher as the actions of the criminal aimed at masking and eliminating the traces of this crime (Kolmakov, 1956). Forensic examination can be used as a means of committing, for example, moving a corpse or living persons, a person staying in a certain area, as well as a way of hiding, usually burying a corpse or its parts, burying objects of a criminal offense.

In criminal offenses, the generic object of which is the protection of life and health of a person, the forms of use of special knowledge are the involvement of a specialist and the appointment of a forensic examination. Consider the practical application of specialized knowledge in the field of soil science in the investigation of premeditated murder.

Thus, the verdict of the Donetsk Court of Appeal established that the accused A. and B. illegally took possession of a Toyota Avensis car and killed its owner V. with the use of firearms. and other persons, as well as ammunition left in them after the commission of these crimes, and then buried them in the ground in various places, for the purpose of concealment and further illegal storage. The conclusions of forensic soil examinations with diagrams and photo tables confirmed that the soil removed from the mat near the driver's seat of the accused A.'s car has a common ancestral and group affiliation with the soil removed from the surface of a small bayonet shovel and the soil removed during inspection. The soil removed from the surface of the large bayonet blade has a common genus with the soil removed during the search of the car belonging to A., have a common

genus with the soil removed during the inspection (Judgment of the Donetsk Court of Appeal in case 235/661 / 14-k).

In another case, A.'s Kharkiv District Court found A. guilty of intentionally killing B. and illegally seizing her laptop. soil samples for forensic examination, investigative experiment, presentation of the corpse for identification, search of A.'s place of residence, during which material evidence was seized. The conclusion of the forensic soil examination with illustrative tables to it established that the soil layers removed from the bayonet shovel and soil samples removed from the burial place of the corpse, and one of the samples removed at the place of its discovery, are characterized by common genus and common group affiliation (Judgment of the Kharkiv District Court of the Kharkiv Region in the case № 2034/13730/2012).

Thus, forensic examination should be ordered in the investigation of premeditated murders, when it is necessary to establish whether the corpse was reburied, whether the person was alive in a certain area if the corpse's shoes preserved layers of soil, whether there was contact with the victim's clothes and certain contact object (for example, vehicle bumper), with which tools (shovels, crowbars) the corpse was buried, as well as whether the suspect was in the area where the corpse was found, whether the corpse was moved from one part of the area to another, in what way (rolling, dragging, etc.) and how many people were moved. Establishing the number of co-perpetrators contributes to solving the problems of criminal proceedings under Art. 2 of the Criminal Procedure Code of Ukraine (Criminal procedural code of Ukraine, 2012), which is also provided for in paragraph 3 of the resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of crimes against life and health» of February 7, 2003 № 2 (Resolution of the Court of Ukraine «On judicial practice in cases of crimes against life and personal health», 2003).

The main problematic issues that arise when inspecting the scene are the correct removal of soil samples, clothing, footwear and other items that have layers of soil and mineral origin. Practice shows that most physical evidence is seized without complying with the mandatory conditions for its preservation during transportation and storage. Also, there are cases of incorrect determination by investigators of the spatial boundaries of land plots, which leads to incorrect removal of control samples.

As a result, further forensic examination does not contribute to the localization of a certain area. Improper packaging of physical evidence, especially when clothes and shoes are packed together, leads to rash and contamination of the layers, which negatively affects the results of a comparative study. That is why the involvement of a specialist in the inspection of the scene is a prerequisite for the collection of appropriate evidence, and on the other hand it facilitates the work of a forensic expert, who will then conduct a forensic examination.

In the process of forensic soil examination (selection of the study scheme and evaluation of the results) it is necessary to take into account the completeness of the reflection of soil layers on the objects and preservation in the layers of initial indicators during operation of objects with layers and removing them for research. Thus, the evaluation process in forensic soil science examination is heuristic in nature and cannot (except for the main stages) be programmed in advance.

Each expert study of soil-mineral substances requires a creative approach taking into account all the features of the objects of identification, including the suitability of the site for localization and identification, the identification significance of signs, the presence of sufficient soil layers and preservation of initial indicators, matching properties all components and impurities in comparable soils, etc.

3.4. Forensic handwriting examination

The generalization of expert practice in criminal proceedings on murders indicates the presence of significant shortcomings in the preparation and execution of materials for forensic handwriting examination. In particular, copies or technical images of documents are often provided for forensic handwriting examination of manuscripts and signatures. However, such examination is carried out exclusively on the basis of original documents.

A common shortcoming in the appointment of the examination is the direction of materials for its conduct, which does not specify which documents are subject to study, in which columns are the handwritten record or signature, as well as which documents contain samples of handwriting and signature of a person that the expert could use for comparative research.

At the same time, according to Article 69 of the Criminal Procedure Code of Ukraine, an expert has no right to collect materials for examination on his own initiative (Criminal procedural code of Ukraine, 2012). Assignment of documents to the objects of research, as well as to the handwriting and signatures of a certain person is beyond the powers of the expert and belongs exclusively to the competence of the body (person) that appointed the examination.

One of the most common shortcomings is the lack of comparative materials, both in terms of quality and in terms of quantity, non-compliance with the requirements for compliance of the samples with the studied documents under the conditions of execution (similar writing instrument, pose, lighting, etc.), not the reliability of comparative samples is checked by comparing them with each other. In accordance with paragraph 1 of part 1 of Article 13 of the Law of Ukraine «On Forensic Examination», the expert has the right to submit a request for additional materials, if the examination is appointed by a court or pre-trial investigation body or

review case materials concerning the subject of forensic examination (Law of Ukraine «On forensic examination», 1994).

The body (person) that appointed the expertise (involved the expert), who ignores the experts' requests for the necessary materials and insists on conducting the expertise on the provided materials, deliberately puts the expert in a situation of possible erroneous conclusions or necessity refusal to resolve the issue.

Poor quality comparative material is usually found when courts appoint forensic handwriting examinations to examine the signatures of the elderly and senile, in wills, gift agreements and applications for revocation of wills. This is reflected in the incomparability of the samples in comparison with the investigated signature by transcription, time or conditions of execution and the absence of free and experimental samples of signatures of the probable person, as well as the insufficient number of free samples of signatures of this person (Bilous, 2019).

A common drawback is the violation of the tactics of sampling. A significant violation of the method of taking handwriting samples and signatures is to provide the person from whom the experimental samples are taken, the opportunity to reproduce the handwriting object from the document under study, which is strictly prohibited. When taking free and experimental samples of handwriting and signatures made in unusual conditions, or in an unusual way, only in some cases, specialists with special knowledge in the field of handwriting are involved. Thus, only with its help it is possible to most accurately establish the pace at which the text of the studied document was performed.

We consider it expedient to outline the peculiarities of conducting expert research in the field of handwriting in criminal proceedings on murders.

Changes in external and internal factors influencing the formation of handwriting have significantly changed the structure (structure) of handwriting in modern society, which requires adjustment of a number of characteristics of the general features of handwriting. Insufficiently studied objects of research are handwritten texts and signatures made by the left hand with natural shulga, and should also be finalized. Therefore, at the present stage in forensic handwriting there are two main areas of research of altered handwriting: the establishment of the fact of unusual execution of the manuscript and the identification of the executor of the altered handwriting.

Along with manual methods in handwriting research, recently, more often used machine methods of analysis of features in the compared handwriting (signatures). Experiments are conducted on the use of image recognition algorithms in handwriting research, as well as to establish the authorship of anonymous texts. The handwriting of a certain person as

a whole, as well as individual written signs, which together constitute an individualized complex, represent an image (Kravchenko, 2019).

In addition, handwriting can change under the influence of external factors, such as alcohol or drug intoxication. The study of the peculiarities of writing and written speech of persons under the influence of toxic (including pharmaceutical) substances should be recognized as promising. There is an objective need for in-depth study of the handwriting of persons for whom the left hand is the leader. After all, the number of such people is steadily growing. Here, too, the multidisciplinary nature of handwriting science will be manifested, because knowledge should be applied not only purely handwriting, but also pedagogical, partly medical, psychological, with a collection of extensive experimental material (Savchuk, 2019).

Of particular note is the study of the impact of mental illness on writing. The progressive level of development of forensic psychiatry, the availability of new methods of treatment and the release of new pharmaceuticals to overcome this category of diseases makes handwriting experts interested in this topic in parallel with specialists - psychiatrists. Another separate type of multidisciplinary research should be considered the impact on the handwriting of the psychological state of the performer. Graphology as a scientific discipline has experienced better and worse times, but in Europe it is now experiencing a «second life».

For example, in France, while studying at university, students study graphology in order to take tests at employment or in vocational guidance institutions. In Italy, graphologists (as handwriting psychologists) and handwriting experts study together. This seems logical, as handwriting scholars should be interested in psychology for a more thorough study of writing. However, it should be recognized that there are not always significant links between a person's mental state and his or her handwriting. Emotional factors may affect the writing skill, but due to the strength of the individual, the firmness of his character, such factors may not be reflected in the handwriting or signature (Savchuk, 2019).

One of the tasks of scientists is to develop an electronic computer that can recognize the handwriting of an individual among many different handwritings. Therefore, in cases where the eyes of an expert in the comparative study of some handwriting objects are an imperfect tool, the problem of creating a more perfect apparatus of distinction, which would work in areas and ranges inaccessible to direct visual perception of man.

The experiments conducted on cybernetization of handwriting research are based on the principle of creating a machine that would first memorize handwriting patterns (learn), and then, learning to distinguish them, perform recognition. It is determined that of the research in the direction of creating model and automated methods used in handwriting examination

in the modern post-Soviet space, the most interesting are the developments of criminologists of Ukraine, who first began to create and use expert systems in forensic handwriting examination (Kravchenko, 2019).

The complex nature of the methodological tools used means that the process of solving the tasks of forensic handwriting examination includes a variety of methods: qualitative-descriptive, quantitative, model (mathematical), instrumental, as well as the use of modern computer technology.

We consider the scientific support of expert activity in the field of soil science to be an indisputable positive in the investigation of criminal offenses, including those whose object is encroachment on the life and health of a person. One of such steps is the development of a manual in which, based on the latest advances in science, in accordance with the requirements of expert practice, it is necessary to highlight the theoretical foundations of forensic handwriting, the concept of written language and handwriting, modern classification of writing, provide general and most common methods of identification , to consider diagnostic and situational researches of handwriting, methods of mathematical modeling which are applied at the decision of various handwriting problems. Detailed research and solution of the above issues will significantly expand the possibilities of forensic handwriting and increase the efficiency of experts in the field of handwriting examination (Kravchenko, 2019) both in general and in the investigation of certain types of crimes in particular.

Conclusions

Summarizing the above, we can draw the following main conclusions:

1. Special forensic knowledge used in the process of investigating murders includes information on forensic means and methods of detection, recording, seizure and investigation of material traces of these crimes and other material evidence used in the course of expert, investigative or judicial activities, fixed in various material sources, carriers of this information.
2. The main forms of using special knowledge in the investigation of murders include: participation of a specialist in conducting investigative (search) actions, consulting specialists and conducting forensic examinations. The integrated use of such forms will ensure the impartiality, completeness and comprehensiveness of the pre-trial investigation and will facilitate the prompt disclosure of deprivation of life.

3. Given the increased public danger of homicides, their high latency and low level of disclosure, there is an urgent need to increase the efficiency of the use of specialized knowledge in the investigation and trial of these criminal offenses. Particular attention in this activity should be paid to the use of such types of expertise as phonoscopic, soil science and handwriting, the theoretical foundations and methodological basis of which need to be updated and adjusted to the latest techniques and leading world practices. There is also a need to expand the capabilities of these forensic examinations, their comprehensive application in the investigation of this category of crimes.

4. Despite the strong scientific and technical potential for the application of specialized knowledge in the investigation of crimes against life and health, currently the level of development of relevant guidelines in Ukraine in the field of phonoscopic, soil science and handwriting, their lack of focus on today's investigative and judicial problems. practices determine the need for comprehensive research in this area, taking into account today's conditions. In addition, at the state level the priority is to develop and update a training program for novice experts, which should include a thorough study of both classical and modern methods and techniques, advanced foreign experience, which would not only expand the professional worldview of specialists with special knowledge, but and opened new opportunities for the use of certain expert studies in proving the circumstances of criminal offenses, in particular, one of the most socially dangerous - murder.

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Semiotics of law in modern philosophical and legal research

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Abstract

The objective of the article was to assess the semiotics of law in modern philosophical and legal research. Recently, semiotic scientific research on the analysis of legal reality has become increasingly relevant, its demand is explained by the active search for meta-legal foundations for the integration of modern legal theory. The research carried out in the proposed article is applied using dialectical, systemic structural, genetic, and other methods, which allows us to affirm that interdisciplinary studies of law from the point of view of semiotics compete with many other approaches and contribute to solving important problems of philosophical and legal ciencias. It is conceptually concluded that the semiotics of law has direct and indirect organic relations with all the main subdisciplines of the philosophy of law: legal ontology, epistemology, anthropology, axiology, and praxeology, and represents one of the interdisciplinary approaches to law. The importance of semiotic analysis of the problems of legal reality is emphasized, which demonstrates the logic of its construction, systemic and structural connections, reveals the internal mechanisms and symbolic patterns of its development.

Keywords: cognitive activity; methodology of law; legal semiotics; human thinking; legal regulation.

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Semiótica del derecho en la investigación filosófica y jurídica moderna

Resumen

El objetivo del articulo fue valorar la semiótica del derecho en la investigación filosófica y jurídica moderna. Recientemente, la investigación científica semiótica sobre el análisis de la realidad jurídica se ha vuelto cada vez más relevante, su demanda se explica por la búsqueda activa de fundamentos metajurídicos para la integración de la teoría jurídica moderna. La investigación realizada en el artículo propuesto se aplica utilizando métodos dialécticos, estructurales sistémicos, genéticos y otros, lo que permite afirmar que los estudios interdisciplinarios del derecho desde el punto de vista de la semiótica compiten con muchos otros enfoques y contribuyen a resolver problemas importantes de las ciencias filosóficas y jurídicas. Se concluye conceptualmente que la semiótica del derecho tiene relaciones orgánicas directas e indirectas con todas las principales subdisciplinas de la filosofía del derecho: ontología jurídica, epistemología, antropología, axiología y praxeología, y representa uno de los enfoques interdisciplinarios del derecho. Se enfatiza la importancia del análisis semiótico de los problemas de la realidad jurídica, que demuestra la lógica de su construcción, conexiones sistémicas y estructurales, revela los mecanismos internos y patrones simbólicos de su desarrollo.

Palabras clave: actividad cognitiva, metodología del derecho, semiótica jurídica, pensamiento humano, regulación jurídica.

Introduction

Semiotics (from gr. «semeion.» – sign) – is a field of interdisciplinary research that studies knowledge and sign systems as a means of storing, transmitting and reinstalling information in the world as a whole, human thinking and society, also during this time for cognition certain sign systems (semiotics of language, semiotics of art, semiotics of religion, semiotics of brush, semiotics of art, semiotics of religion, semiotics of brush, semitopics, semitopoki.

Semiotics aims to identify common knowledge in the substantiation of information processes in nature and society, to exclude the laws of cognition and communication, to remove the semi-semiotic nature of these processes, to describe information-semiotic components of personality and society, to expand the range of humanities. The application of the achievements of semiotics to specific areas of social life and human activity contributes to productivity, as well as new industry knowledge, which is

formed on the basis of such application, have a clearly defined character and necessary representatives who must take into account independent disciplines. semiotic rights.

Almost decisions after the onset of general semiotics attracted ideas for its achievement. They began to compile legal semiotics as an autonomous science, designed to analyze the symbolic system-structural organization of law, as well as the essence, power, restoration and patterns of functioning of legal symbols. Law in this approach becomes a theory, which is the nature and logic of law from the standpoint of theory. An in-depth study of legal reality and legal person with the help of theoretical and methodological apparatus and tools of semiotics «can identify relationships and restorations that reveal the peculiarities of interaction between people and rights, help to capture general semiotic patterns that occur in the legal system. and fixing the pattern of patterns of functioning and development of law opens new directions and prospects for philosophical and legal research, and semiotics of law can be not only as a disciplinary field of knowledge about law, but also as a theoretical and methodological paradigm of philosophical and legal discourse (Pavlyshyn, 2017).

From a semiotic point of view, there is a system of systemic formal elements that are combined in a variable and a system of formal elements that are combined in a variable and systematic formal elements that are combined in variable commission committees for analytical activities. The range of these elements is small, but they can create a lot of theoretically obsessive itzoybi. The semiotic approach to rights offers the possibility of revealing the internal mechanisms of its functioning as isolation as isolation as isolation.

O. Minchenko emphasizes the importance of taking into account the semiotics of law in lawmaking, as the legislation contains terms incomprehensible to a wide range of subjects of law, implemented from narrow fields of knowledge, when there is no clear agreement between terms in scope or content, which changes terminological conflicts and Understanding the essence of legal semiotics is a factor in the effectiveness of lawmaking semiotics is a factor in the effectiveness of lawmaking semiotics (Minchenko, 2019).

Given that in modern science the practical struggle with opportunities, we can say that for those who now work, does not define the principles of regularity, methodological institutions and develops fundamental theoretical foundations of semiotic and semiotic-legal research, but also analyzes specific legal manifestations in the context of semiotic output, which may arise their symbolic nature and characteristics (Pavlyshyn, 2017).

1. Methodology of the study

The study of the connections between the semiotics of law and ontology, epistemology, axiology, anthropology and praxeology of law conducted in the proposed article is essentially the application of the semiotic-legal approach to these philosophical and legal disciplines. The study also used:

- dialectical method, the need for which was determined by the fact that the philosophy of law is in a state of constant development, with its components are organically linked; he made it possible to determine the place and role of the semiotics of law in the philosophy of law and the interrelationships that exist between the semiotics of law and other philosophical and legal disciplines;
- system-structural and functional methods, the need for which is explained by the fact that the philosophy of law is not just a set of components, but forms a system, all components of which are closely related to each other and perform their own functions ;
- genetic method, which allowed to substantiate the sequence of philosophical and legal disciplines, the relations with which were analyzed.

2. Analysis of recent research

Research and organizational efforts in this area are of great importance for the registration of the autonomous status of semiotics of law and the active development of semiotic-legal methodology in the recent period. Methodological developments and investigations of leading Ukrainian scientists are devoted to certain aspects of this issue (Khabibulina, 2001; Chestnov *et al.,* 2006; Jackson, 1985; Balinska, 2013; Kovkel, 2009; Merezhko, 2003; Sarkisov, 2000; Chestnov *et al.*, 2006). The semiotics of law has gained worldwide recognition - every year in different countries subject and thematic «round tables» are held, since 1987 the international journal Semiotics of law is published, other forms of cooperation and coordination of researchers in this field are developed.

At the same time in the literature on the philosophy of law there is intelligence on the problems of legal semiotics (Balinska, 2013; Kovkel and Popova, 2019; Minchenko, 2019). Moreover, legal semiotics is sometimes positioned as a component of the philosophy of law, so other philosophical and legal disciplines influence it. A number of works raise questions about the relationship of legal semiotics with other components of the philosophy of law. Some authors touch on the connections of legal semiotics with legal axiology (Minchenko, 2019; Sarkisov, 2020; Balinska, 2013), with legal

epistemology and ontology (Minchenko, 2019; Crymskii, 2003), with legal praxeology (Gusarev, 2005).

But these authors mainly only fragmentarily study the impact of semiotics of law on these components of the philosophy of law, and to a much lesser extent affect their inverse effect on the semiotics of law, which is actually important for the development of both semiotic and philosophical law research. significant scientific interest. This determines the relevance of this study.

3. Results and discussion

If we summarize the known works on this issue and encyclopedic definitions (Pavlyshyn, 2017), we can state that the semiotics of law is a field of knowledge formed on the basis of interdisciplinary studies of law as a sign system aimed at analyzing sign and structural organization of law, as well as the essence, properties, relations and patterns of functioning of legal signs. Under the semiotics of law, in addition, understand the sign theory, in which law is seen as a means of storing, processing and transmitting information in society, or theory that considers the nature and logic of law in terms of sign as a key characteristic.

In connection with semiotic studies of other socio-cultural phenomena, the use of the term «semiotics of law» should also be taken into account to denote a specific symbolic organization of legal reality, ie in the context of interpreting legal reality itself as a certain sign system. Thus, depending on the context, this concept is given one or another meaning, and the mentioned term is used in the appropriate special meaning.

The object of the semiotics of law, ie the dimension of reality, which is aimed at the cognitive activity of the subject within this field of knowledge, is the law in its symbolic reflection or sign system and structure of law.

The subject of semiotics of law is formed by the general principles of sign organization of law, patterns of its development and functioning as a sign system, syntactic, semantic and pragmatic relations between legal signs, legal phenomena and carriers of legal consciousness.

The main functions of the semiotics of law in the system of legal knowledge: 1) cognitive (information); 2) methodological; 3) critical; 4) symbolic and reflective; 5) prognostic, etc.

It should also be noted the significant heuristic potential of semiotics of law, especially in the theoretical development of concepts that emerge from research at the intersection of different areas of scientific knowledge and reflect the interaction of complex sign systems – morality, law, politics, religion and other sociocultural phenomena.

Semiotic-legal methodology of legal research is a system of methodological approaches and theoretical principles of their use in the study of legal phenomena, which are based on the understanding of legal reality as a sign system.

Methods and strategies of studying law as a certain ideal object determine the theoretical plane of semiotic-legal methodology, and the methods of purposeful transformation of legal reality and achieving the desired results - its practical plane. Both the first and the second have a common basis, are based on a single methodological basis and are based on the recognition of law as a model of multidimensional sign socio-cultural system, in which there are links between elements of one level, interlevel links, and links objects of spiritual, social and material reality, which they denote.

In this case, in contrast to alternative methodological systems that absolutize certain aspects of the existence of law and concentrate on certain properties, law is seen as a form of social consciousness, value and normative system, regulator of social relations, the practice of human life. With the help of semiotic-legal methodology, each structural level of legal reality (legal principles-ideas, legal prescriptions-norms, legal relations) is analyzed as part of a single universe. These subsystems, in which, along with the general and their own laws, are recognized as independent sign objects with specific sign characteristics, while this approach preserves a holistic view of law as a socio-cultural phenomenon. The symbolic nature of law allows us to apply the achievements of semiotics to the analysis of various legal phenomena, respectively, to learn more about the law and see other aspects of this system object.

The semiotics of law is not only a field of research that has an interdisciplinary nature, but also a relevant field of knowledge about law in its symbolic dimension. The methodological aspect of considering this concept can be revealed using an alternative meaning of a more general category. Semiotics is positioned as a philosophical method of research and interpretation of reality, along with dialectics, psychoanalysis, hermeneutics, phenomenology, structuralism and other approaches formed on the basis of philosophical trends, which allows us to consider the semiotics of law as an independent and full methodology of philosophical and legal.

Modern philosophical and legal discourse is increasingly turning to intersubjectivism as a way to justify law and tends to integrative theories of law, which indicates a departure from the classical opposition of jusnaturalism and legal positivism as types of legal understanding. The emergence of communicative theories of law, confirming this conclusion, stimulates the development of a new theoretical and methodological support, terminological apparatus, which is used in the study of the symbolic nature of law.

The semiotic approach to the analysis of legal existence has both integrative – due to the fact that it avoids the traditional opposition of natural and positive law, and independent methodological significance, as it allows to reveal the properties and features of legal reality that remain underdeveloped without falling into the field of alternative approaches. This testifies to the compliance of semiotic-legal methodology with modern demands and needs of legal theory and its ability to respond to current challenges of legal practice in the world and in Ukraine.

The starting point for this methodological approach is the assertion of the symbolic nature of law – the assertion that legal reality, which is rich in content and structurally complex formation and reflects the peculiarities of human perception of the world, as well as objective laws of human coexistence in society, is also symbolic. Legal norms, with a well-established understanding of them as elements of law, are also part of a special legal matter, the internal logic of the organization of which is revealed by semiotic studies of legal reality. At the same time, it is impossible to study a legal sign and legal sign constructions separately from legal practice, ie semiotic studies of legal reality have a clearly defined praxeological character.

Providing an opportunity to look at the processes taking place in legal reality from a different angle and at a deeper level, the semiotics of law allows to gain new knowledge about law, which is embodied in the new integrative (as it is typical of modern theories of intersubjectivist type) legal understanding. criticism of positive legal forms of organization of public life, and in proposals for improving its legal regulation, as well as assumptions about the prospects for the development of modern legal systems, lawmaking and law enforcement, etc.

Semiotic analysis of law reveals the internal mechanisms and symbolic patterns of its functioning, demonstrates the logic of construction, systemic and structural connections of legal reality, thus equipping the philosopher of law with valuable knowledge that can be used to understand the characteristics of legal organization of social life and to improve the practice of regulatory regulation of public relations.

Coordination of semiotic research with problematic issues of philosophy of law, key issues of ontological, epistemological, anthropological, axiological, praxeological nature, which determine the subject field of its individual sections, increases the practical value of these studies, increases the effectiveness of scientific research, and promotes heuristic potential field of knowledge.

Due to its metalegal nature, the semiotics of law generalizes and interprets knowledge about law according to its own canons, and opens new directions and perspectives of philosophical and legal research, forms a paradigm of philosophical and legal discourses of today, is a theoretical and

methodological basis for symbolic theory of law and the corresponding type. legal understanding, which has an integrative nature and reflects the latest trends in legal science. The main feature of this methodological approach to the interpretation of the essence and specifics of legal phenomena and processes and, accordingly, a significant advantage of semiotic-legal methodology is their clear praxeological orientation, reflected in a number of works of famous Ukrainian philosophers of law Olga Balynska, Oleg Bandura, Oleg Gvozdik, Mykhailo Kostytsky, Oleksandr Lytvynov, Serhiy Maksymov, Olga Minchenko, Oleg Pavlyshyn, Petro Rabinovych, Iryna Smaznova and other scientists (Abysova *et al.*, 2019; Kostytsky *et al.*, 2020) Kushakova-Kostytska *et al.*, 2020; Balinska, 2013; Litvinov, 2014; Maksimov, 2012; Bandura, 2019; Smaznova, 2019; Rabinovych, 2004; Pavlyshyn, 2019; Maksimov, 2002; Kostytsky, 2009; Pavlyshyn, 2021).

Considering the system of connections of semiotics of law with philosophical and legal researches, it is necessary to pay attention to problems of the basic and fundamental branches of philosophy of law. In particular, the semiotics of law is organically linked to legal anthropology, which studies man as a legal being (legal person). In philosophy, man is understood as an individual, an individual, and as a society. Accordingly, a legal person can be understood as a separate being and as a society (every society has its own right).

From the point of view of philosophical anthropology, man must be considered in the process of its historical development. In general, man is a biosocial being. Biological and social in it are organically connected with each other and at the same time they are certain opposites. Both social and biological can play a leading role in this dialectical unity, depending on the situation. A fundamental feature of the social is that it cannot exist without consciousness. Accordingly, the main feature of a legal person is legal awareness.

The links between legal semiotics and legal anthropology are twofold. On the one hand, legal semiotics can be considered as a component of legal anthropology. When researching a person as a legal being, for its full understanding it is necessary to take into account the fact that in its activity it cannot do without the use of appropriate signs and symbols. On the other hand, for a full understanding of legal signs it is necessary to take into account that they are a means of legal activity, human activity as a legal entity.

In general, man acts as a semiotic being, «homo semioticus». The greatest role in human life in general is played by such symbols as words, because language is a signal system (second); the language of law can be considered as a verbal abstraction of legal reality.

A legal person is also a semiotic being. Creating law as a system of signs, man seeks to build humane law. The application of semiotic methodology contributes to the implementation of the anthropological paradigm.

Reflecting on the general mechanism of creation and understanding of signs, Olga Balynska writes: "and this sign was clear to all bearers of a certain type of culture within which this sign existed» (Balinska, 2013: 206). This is also true for the creation and understanding of signs in the field of law, ie legal signs.

Touching upon the issue of law-making, O. Balinska expresses such an interesting opinion that the subjects of this activity can be considered all members of the legal community, at least in the sense that they participate in the election of legislative bodies; they are to some extent involved in the recognition of certain problems of public life as being of sufficient importance and in need of legal settlement; at the same time, it can be assumed that all of them are also consumers of law, because its norms apply to all citizens (Balinska, 2013).

The scientist proposes to interpret the creation and perception of legal signs as a single holistic process of semiosis (the origin, movement and functioning of these signs). And since the main subject in this process is a person (both as a creator of law and as a social entity that perceives law through signs for use, execution, observance and application), it is appropriate to talk about the anthroposemiosis of law (Balinska, 2013).

Man creates signs, and signs in a sense create man. Raising a child is the formation of a certain worldview, ie a certain system of symbols. This system of symbols plays a decisive role in human life. Legal signs have a fundamental influence on the formation and development of man as a legal entity, in the issue of semiotics of law can be identified anthropological aspect. Legal signs affect a person, his legal worldview, legal behavior, determining the «norms» of legality and illegality, as well as the level of legal responsibility for illegal acts and actions (Balinska, 2013). The semiotic interpretation of the central problems of legal anthropology is becoming increasingly important. Thus, legal semiotics has organic interrelationships with legal anthropology.

The semiotics of law has organic, dialectical relationships with legal praxeology and explores the signs used in human activity as a legal entity. It is part of the praxeology of law as a science of legal activity, they are related as part and whole. We can also talk about the semiotics of legal activity. In the process of such activities, new legal signs are created and given a certain meaning; individuals and legal entities use these marks in accordance with their meaning; legal activity is impossible without the use of signs.

The legal symbol and symbolic construction have praxeological and legal significance due to the need to solve a number of problems in the field

of legal practice, which requires an adequate understanding of the nature and structural organization of law. In addition, the fixation of symbolic patterns of law can significantly help in lawmaking, law enforcement, law enforcement and legal education, and in the process of creating appropriate electronic automated systems, programs, attempts to informatization and partial automation of legal activities (Pavlyshyn, 2017). Semiotic-legal analysis of such legal sign constructions (and concepts) as «legal activity», «legal activity», «administrative activity in the field of law» can give important results.

Improving legal activity (in particular, legislative, law enforcement, law enforcement, legal education) and legal activity, as well as human activity in general, requires analysis of the concept of «management system» and its symbolic elements, detailed study of the management process in the field of law in the semiotic plane. optimal legal solution in general.

But in order for a legal decision to be useful, it must be timely, aimed at the optimal use of resources of the individual (organization) and must be able to implement it; the decision should be formulated concisely and unambiguously, the range of persons to whom it applies, territorial and chronological boundaries, the order of implementation and cancellation, other semiotic and legal characteristics necessary for its accurate understanding should be clearly defined. In case of violation of these requirements, the legal decision will have negative consequences. Therefore, it is very important to develop promising areas for improving the process of justification and legal decision-making. Semiotic methodology should play a fundamental role here.

If we talk about the requirements for legal activity, then the semiotic series of their symbolic characteristics and structural elements is as follows: 1) humanism; 2) justice; 3) legality; 4) validity; 5) expediency; 6) clarity; 7) accuracy; 8) systemicity; 9) predictability, etc. Determining the areas of improvement of legal activity, it is necessary to focus on these basic requirements in order to improve the quality of legal decisions and at the same time look for ways to simplify and accelerate their adoption. In particular, with the help of semiotic-legal analysis it is possible to determine the following principal areas of improvement of legal activity: regulatory, organizational, logistical and educational, as well as a number of specific areas that are included in each of them (Pavlyshyn, 2017).

The initial sign element of the legal system is law-making activity (this is the name it has in the general theory of law, although from a semiotic-legal point of view it is more correct to call it «legislative»); it is followed by law enforcement and law enforcement (within the abstract semiotic-legal scheme). However, in terms of socio-legal relations and behavior of legal entities, law-making (formation and formulation of law) may well be preceded by compliance, implementation and use of law, empowerment

of certain entities, management decisions in the field of law and more. At the same time, the importance of law-making activity is difficult to overestimate, because it is through this type of legal activity that a formal model of desired (or undesirable) human behavior in society is built. The need for law-making activities is caused by the need to regulate new social relations or improve the legal regulation of existing ones.

In the context of the study of the legal system as a sign construction should also refer to the procedure for implementing the process of law enforcement. This process usually begins with establishing the facts of the case; then establish the legal basis of the case, ie the legal qualification of the facts and then make a decision in the case and document the decision. The above is a confirmation that the semiotics of law as a science of signs, which are the means of legal activity, is part of the praxeology of law as a science of this activity, that they are related as part and whole.

The semiotics of law is dialectically related to the epistemology of law. It should be borne in mind that in general, legal activity, which is the subject of research in legal praxeology, is divided into practical and cognitive. Each of them uses signs, symbols as necessary means, knowledge of the law cannot do without signs. Therefore, legal semiotics is a component of legal knowledge (as well as a component of practical legal activity). Here is the dialectic of part and whole, legal semiotics in turn affects the legal epistemology.

We specify the links between the semiotics of law and the epistemology of law. In order to use legal signs correctly, it is necessary to study their meaning and investigate the connections between them. The forms and methods of cognition developed by general epistemology and epistemology of law are used. It should also be borne in mind that each method has its own scope. The semiotics of law, establishing the possibility of applying the methods developed by general epistemology and epistemology of law, expands the idea of the limits of application of these methods, the features of their application for the study of legal signs.

The epistemology of law is enriched by semiotic-legal approaches. They allow us to reveal those aspects of legal life that can not be reproduced in any other way, produce a special knowledge of law. The study of legal sign construction has an important epistemological and legal significance. Knowledge of law involves its analysis from the standpoint of different approaches and using different terminology, categorical apparatus. This process is due to the rich variety of manifestations of law, which is fixed in the process of its knowledge, understanding and construction of its holistic vision (Pavlyshyn, 2017). Semiotics of law acts as a methodological paradigm of philosophical and legal knowledge, and it significantly increases the efficiency of scientific research, the practical value of research, and contributes to the development of semiotics of law as an interdisciplinary

field of knowledge, realization of its heuristic potential (Pavlyshyn, 2017). In addition, legal semiotics (and general semiotics), combined with legal praxeology, has a wide range of heuristics in terms of coordinating interdisciplinary research. The application of semiotic methodology in the study of law leads to a significant change in perceptions of it.

O. Minchenko notes that legal-linguistic interpretation (which has a direct connection with semiotics) is always not only an interpretation of the legal text, but also knowledge, finding law and other legal phenomena, as well as self-knowledge, as it includes value , socio-cultural aspect, historical experience (Minchenko, 2020). Knowledge of the symbolic nature of law allows «penetration into the text itself», that the legal text is characterized by semantic plurality, it is its immanent feature that «understanding of symbols involves plurality of meanings, as it must be done through legal discourse» (Minchenko, 2020: 13).

Thus, the connection of the semiotics of law with the epistemology of law is dialectical in nature – they, having obvious differences, are interdependent, cannot exist without each other, constitute a kind of organic unity.

Next, the person begins his activity by defining a goal. Here the fundamental role is played by needs, interests, values.

Let's turn to the question of legal values. They can be divided into the following two categories. The law gives them the status of legal laws and thus makes them legal values. This is a person, his life, freedom, responsibility, dignity, property, equality, justice, and so on. All these values are the basis of human survival, they determine the direction of all legal activities. The second category includes values produced by law itself (for example, legality).

In addition, the law itself is of outstanding value. It civilizes both the individual, his harassment, and society as a whole, it is aimed at resolving all conflicts in society by nonviolent methods, to weaken the role of arbitrariness and chaos in these processes. Law serves as a means of establishing a generally stable order in society. The meaning of law is largely to exclude from people's lives the «right of force» and replace it with the «force of law». Law is an effective means of self-realization, self-creation of man on a historical scale and makes him more humane.

The reason for the value of law is that it regulates social relations through clearly defined norms. In this sense, law is more valuable than morality, because its norms, in contrast to moral, are based not only on the inner convictions of man and public opinion, but also on coercion (or threat of coercion), including physical, which is more a significant factor. At the same time, the law makes the basic moral norms more effective, giving them the status of such norms that are protected by the state.

The semiotics of law has organic relationships with the axiology of law. Axiology of law, exploring the values in the legal field, works with signs (more precisely, with their meanings). The axiology of law, like the semiotics of law, is closely related to the praxeology of law. Signs, symbols are a means of legal activity, and values determine its goals. Axiology of law in this regard is part of the praxeology of law (Bandura, 2019). Similarly, the latter includes the semiotics of law. These two philosophical and legal disciplines are correlated as part of one whole – legal praxeology, they occupy the position of its subdisciplines.

The semiotics of law works in conjunction with the axiology of law. In the semiotic approach to the problems of law (or any other field of activity), first their semiotic interpretation is made, hierarchies of signs and their groups are established, here the axiological aspect of these problems must be taken into account. As a philosophical and legal discipline, the semiotics of law studies law as a sign system.

> Cognitive interest and research attention in it are focused mainly on demonstrating the cognitive capabilities and heuristic potential of a particular philosophical concept in the field of legal research. Law is the object of semiotic analysis in the context of the picture of the world proposed by one of the philosophical systems (Pavlyshyn, 2017: 76).

Concretizing the relevant concept regarding the features of structural construction and symbolic organization of law, its understanding, explanation and development in the conceptual apparatus of this philosophical concept, legal semiotics necessarily takes into account its axiological aspect. In addition, the legal sign construction is to some extent formed on the basis of the value core of natural law and combines it with the value of the legal form, which it eventually acquires (Sarkisov, 2000).

Symbols, signs are a widely used means of expressing values, the hierarchy of signs is determined by the hierarchy of values, they are the main reason for the creation of signs. In the legal field, both verbal and nonverbal legal signs are used. Verbal legal signs (legal words-concepts) serve as an example of value-laden vocabulary that reflects the most important social priorities, contains the ideal of the legal doctrine of the state, represents the beliefs of society and the will of the majority of citizens (Balinska, 2013).

Non-verbal legal signs also have a value load, as they «model stereotypes of desired, permitted and prohibited behavior, create legal symbols that have every chance to grow into symbolic artifacts and national archetypes that will recognize the state ... The main source of income and formation of legal... signs is society, so there is every reason to believe that law has a socio-value conditionality, and society – legal» (Balinska, 2013).

O. Minchenko speaks that a person perceives the values of society in a symbolic form, symbols are a means of perceiving social values; the

assimilation of the values of society is an important factor in the development of the legal worldview and, accordingly, the professionalization of the sphere of legal activity (Minchenko, 2020). Legal education is a process of forming a certain hierarchy of legal values, therefore, a certain hierarchy of legal symbols.

Thus, legal semiotics and axiology have close interrelationships. The semiotics of law conceptually encompasses the axiology of law, which explores the value aspect of law, which is created and operates on the basis of functionally oriented codes, symbols, signs of legal (generally social) reality. But at the same time legal codes, symbols, signs are part of the value sphere of law as a means of designating values, the hierarchy of signs is determined by the hierarchy of values, codes, symbols, signs require a value approach, axiology of law conceptually covers the semiotics of law.

Legal semiotics and ontology are also dialectically related. Legal ontology is a theory of legal existence. It can be understood in different ways. In particular, it is quite common to define it as a system of norms of law, legal institutions, legal relations, as well as legal awareness (legal ideas, concepts, theories, emotions, etc.). In our opinion, this is a legal being in a broad sense, which covers the basic levels of legal reality – the idea of law, the rule of law and legal life (Maksimov, 2012). Legal existence has an internal source of development. Such a source is the contradiction between certain elements of this system.

The development of the world is due to the contradiction between its deepest essences – the ideal and the material. In the field of law, the ideal is expressed in the legal consciousness, and the material – in the results of the embodiment of the content of legal consciousness in the real life of society, ie in a set of legal norms and institutions and legal relations. This set is a legal being in the narrow sense. Legal consciousness thus belongs to the sphere of legal anthropology as the main feature of a legal person.

Legal signs and legal existence (both in the broad and in the narrow sense) cannot be separated from each other. On the one hand, legal signs, symbols are part of legal existence, legal reality because they exist. On the other hand, for man as a legal being, all legal existence is filled with symbols. These signs are transformed into information models of things, objects, phenomena, facts, actions, events, subjects and objects that they reproduce. Such information models, being saturated with sign codes, are used in various spheres of human life. One of the areas of application of such information models is... legal reality (Balinska, 2013).

Semiotic analysis of the problems of legal reality is important. It demonstrates the logic of its construction, systemic and structural connections, reveals the internal mechanisms and symbolic patterns of its development. Thus, it provides the philosopher of law with valuable

knowledge, useful both for understanding the characteristics of the legal organization of social life, and for improving the practice of normative regulation of social relations (Pavlyshyn, 2017).

A certain analogue of the concept of legal reality in the general theory of law is the concept of the legal system, the use of which in jurisprudence allows the study and evaluation of positive law in general, and not just its individual components. There is a widespread opinion among scholars that the category of the legal system is a reflection of the maximum level of abstraction in the range of legal categories that characterize the positive dimension of law as a systemic phenomenon. Its components are the legal system, the legal system, legal principles, legal culture, legal institutions, legal techniques, legal terms and legal policy, as well as lawmaking, law enforcement, legal practice and legal relations. Each of these components is an independent object of semiotic-legal analysis (Pavlyshyn, 2017).

The interrelationships of legal semiotics with the legal ontology are mutually beneficial to the extent that law is a part and manifestation of being. Through this interaction, the semiotics of law retains the status of ontological knowledge, which allows it to independently assess the legal reality, not just to study the processes of legal knowledge and reflect on the work of lawyers, because it is during the ontological order that the main knot between special scientific understanding of law.

Important for the transformation of the existing legal being into the proper is the figurative-conceptual model of legal reality, a significant role in the formation of which in the minds of legal people play legal signs, because they play a significant role in managing the transformation of reality into human legal consciousness. activity (Balinska, 2013).

We can summarize that legal semiotics interacts dialectically with the legal ontology, they mutually permeate, condition each other and can be considered as independent of each other only theoretically, in abstraction.

Conclusions

Thus, what is stated in the scientific article allows us to conclude that the semiotics of law has organic direct and indirect relationships with all major subdisciplines of philosophy of law –legal ontology, epistemology, anthropology, axiology and praxeology, as well as representations. modern methodology of law. The concept and reasoning of these philosophical and legal disciplines have a form and meaning. Legal semiotics explores the symbolic form of their concepts and considerations, and each of these disciplines - a specific content of its field. Legal semiotics is dialectically related to other philosophical and legal disciplines as form and content. In

addition, there are a number of other «channels» of interrelations of the semiotics of law with other subdisciplines of the philosophy of law.

Above conclusions can be somewhat detailed and presented in the form of scientific theses.

The semiotics of law is organically linked to legal anthropology. In their activities, a person can not do without the use of appropriate signs, symbols. On the other hand, for their full understanding it is necessary to take into account that they are a means of legal activity, human activity as a legal entity. A legal person creates legal signs, however, and legal signs create a legal person, his worldview is a system of legal signs.

Legal semiotics is correlated with legal praxeology as a part and a whole – legal signs are a means of legal activity; on the other hand, without legal signs, legal activity is impossible and the nature of the signs used in the activity to some extent determines the nature and effectiveness of the activity. Semiotic-legal analysis of such legal sign constructions as «legal activity», «legal activity», «administrative activity in the field of law» etc. can give important results.

Legal semiotics is a necessary component of legal cognition, cognitive legal activity. It clarifies the idea of the limits of application of forms and methods of cognition, developed by general epistemology and epistemology of law and methods. The epistemology of law is enriched by semiotic-legal approaches that allow to reveal those aspects of legal life that can not be reproduced in any other way, produce a special knowledge of law.

The organic relationship between the semiotics of law and axiology is manifested in the fact that the axiology of law, exploring the values in the legal field, works with the meanings of signs. Signs, symbols are a means of legal activity, and values determine its goals. Axiology of law and semiotics of law are part of the praxeology of law. The latter is also part of the latter. These two philosophical and legal disciplines are correlated as part of one whole – legal praxeology.

The dialectical connection between legal semiotics and ontology is that legal signs, symbols are part of legal existence, legal reality because they exist. In this regard, legal semiotics is part of the legal ontology. On the other hand, the legal ontology can be a component of legal semiotics, because for man as a legal being, all legal existence is a system of symbols.

Semiotic analysis of the problems of legal reality is important, which demonstrates the logic of its construction, systemic and structural connections, reveals the internal mechanisms and symbolic patterns of its development. In the process of transforming the existing legal being into a proper one, a figurative role is played by the figurative-conceptual model of legal reality, the construction of which is impossible without the participation of legal signs.

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Normative content of the principle of immediacy of research of testimonies, things and documents during criminal procedural evidence

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Abstract

The objective of the article was to analyze the tactical and procedural characteristics of conducting a record in the investigation of crimes against public security. To achieve the objective in the research process, a system of general and special methods is used, such as: dialectical method; method of systematic analysis of legal norms; comparative legal method; statistical method. Based on the study of legislation, scientific sources, the results of the generalization of investigative and judicial practice, current issues of normative content of the principle of immediacy of the study of evidence and the problems of its implementation during criminal procedural evidence. It is concluded that this principle determines the responsibilities of the persons conducting the trial (questioning suspects, accused, witnesses, victims, experts, hearing expert opinions, reviewing physical evidence, announcing and examining documents, audio and video recordings), to whom correspond the rights of other participants to present evidence, to become personally familiar with the materials of criminal proceedings, receive copies of procedural

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documents, participate directly in investigative and judicial actions. Finally, attention is paid to problematic issues related to the definition of the limits of the principle.

Keywords: principle of immediacy of the examination of the test; assessment of the evidence; researcher; investigating judge; internal conviction of the judge.

Características tácticas y procesales de la realización de un registro en la investigación de delitos contra la seguridad pública

Resumen

El objetivo del artículo fue analizar las características tácticas y procesales de la realización de un registro en la investigación de delitos contra la seguridad pública. Para lograr el objetivo en el proceso de investigación se utiliza un sistema de métodos generales y especiales, tales como: método dialéctico; método de análisis sistemático de las normas jurídicas; método jurídico comparativo; método estadístico. Partiendo del estudio de la legislación, fuentes científicas, los resultados de la generalización de la práctica investigativa y judicial, temas de actualidad de contenido normativo del principio de inmediatez del estudio de la prueba y los problemas de su implementación durante la prueba procesal penal. Se concluye que este principio determina las responsabilidades de las personas que conducen el juicio (interrogar a sospechosos, imputados, testigos, víctimas, peritos, escuchar dictámenes periciales, revisar pruebas físicas, anunciar y examinar documentos, grabaciones de audio y video), a quienes corresponden los derechos de otros participantes para presentar pruebas, familiarizarse personalmente con los materiales de los procesos penales, recibir copias de los documentos procesales, participar directamente en las acciones investigativas y judiciales. Por último, se presta atención a cuestiones problemáticas relacionadas con la definición de los límites del principio.

Palabras clave: principio de inmediatez del examen de la prueba; valoración de la prueba; investigador; juez de instrucción; convicción interna del juez.

Introduction

The current Criminal Procedure Code of Ukraine, adopted in 2012, enshrined Chapter 2 "Principles of Criminal Procedure", resulting in a revision of the system of principles of criminal procedure in accordance with generally accepted requirements of international and European standards. Among them, the domestic legislator attributed the principle of immediacy of the study of testimony, things and documents (paragraph 16 of Part 1 Art. 7 and Art. 23 Criminal Procedure Code of Ukraine) (Criminal procedure code of Ukraine, 2012), which is one of the important legal provisions of criminal proceedings.

The importance of the principle of immediacy for criminal proceedings is primarily because the direct receipt of information by a participant in criminal proceedings provides maximum completeness and correctness of its perception, which is a necessary condition for forming reliable evidence and making sound, objective and fair decisions (Dekhtyar, 2014). Ensuring compliance with the principles of adversarial proceedings, the rule of law and the rule of law in the process of pre-trial investigation is the main guideline of investigating judges in Ukraine in the exercise of judicial control powers (Sukhov, 2021).

Normative consolidation of the main provisions of the principle immediacy study of testimony, things and documents in the criminal procedure law requires the definition of directions for its implementation in law enforcement practice. Currently, discussions in the doctrine of criminal procedure cause problems of elements normative content principle of immediacy, its study from the standpoint of proof. The influence of the principle of immediacy on the stage of pre-trial investigation, the decision on the use of the results of covert investigative (search) actions in criminal proceedings and in the conduct of procedural actions remains poorly studied. Procedural guarantees of the parties acquire special significance for realization principle of immediacy research of indications, things and documents.

Thus, the consolidation by the domestic legislator the new system of criminal proceedings principles, referring to it the principles of testimony immediacy, things and documents, the lack of its implementation at the stages of pre-trial investigation and trial necessitate research in this area, which will be the subject of a scientific article.

1. Methodology of the study

To achieve this goal in the research process used a system of general scientific and special research methods. The method of historical and legal

analysis allowed to study the formation and development of scientific, theoretical and legal foundations of the principle of immediacy in the theory of criminal procedure and criminal procedural law. The application of the dialectical method contributed to the study of the dynamics and relationship of tasks, deepening the conceptual framework, clarifying the essence of the principle of immediacy, identifying elements of its normative content and research problems related to the implementation of this principle in criminal proceedings at various stages. With the help of the method of systematic analysis of legal norms, gaps and contradictions in normative-legal acts were revealed and proposals for improvement of the current legislation were formulated. The comparative legal method was used to compare the norms of criminal procedural law of Ukraine. The statistical method was used in the study and generalization of case law, the formation and substantiation of conclusions based on their results.

2. Analysis of recent research

The problem of evidence, their formation and use in criminal proceedings traditionally belongs to those that attract the most attention of experts at different historical stages of development of the state and legislation. However, in the perspective of the latest legislation of Ukraine, not many scientific works have been devoted to the study of its problematic aspects, in particular, N. Cherkasova (Cherkasova, 1993), O. Dekhtyar (Dekhtyar, 2013), Y. Groshovii, O. Kaplina (Groshovii and Kaplina, 2010), V. Konovalova (Konovalova, 2005), V. Nor, T. Shevchuk (Nor and Shevchuk, 2019), Y. Orlov (Orlov, 1981), O. Shilo (Shilo, 2015), M. Shumilo (Shumilo, 2013), M. Strogovich (Strogovich, 1968), V. Tertyshnyk (Tertyshnyk, 2014), H. Teteriatnyk, (Teteriatnyk *et al.*, 2021) and other scientists.

It should also be noted that with the entry into force of the new Criminal Procedure Code of Ukraine, the main elements of the content of the principle of immediacy of the testimony, things and documents are subject to revision taking into account the rules set out in it, which regulate pre-trial investigation. The above necessitates the purpose of the study to determine the characteristics of personal perception of the investigator, prosecutor, investigating judge testimony, things and documents as an element of the content of the principle of immediacy at the stages of pre-trial investigation and trial.

3. Results and discussion

3.1. The essence of the principle of immediacy of the study of testimony, things and documents

The immediacy of the study of testimony, things and documents defined as the basis of criminal proceedings in paragraph 16 of Part 1 Art. 7 Criminal Procedure Code of Ukraine and formulated in Art. 23 of the Code:

> The court examines the evidence directly. The court receives the testimony of the participants in the criminal proceedings orally. Information contained in testimony, things and documents that were not the subject of direct court investigation may not be recognized as evidence, except in cases provided for by the Criminal Procedure Code of Ukraine (Criminal procedure code of Ukraine, 2012).

The court may accept as evidence the testimony of persons who do not give it directly at the hearing, only in cases provided by law. The prosecution is obliged to ensure the presence of prosecution witnesses during the trial in order to exercise the right of the defense questioned before an independent and impartial tribunal.

The essence of the principle of immediacy is the requirements of the state to ensure the implementation of such criminal proceedings, in which the court, as a body deciding on guilt (innocence), directly, free from the subjective influence of participants in the pre-trial investigation, accepts all the circumstances Criminal case.

Although the provisions Art. 23 Criminal Procedure Code of Ukraine define the main elements of the content of the principle of immediacy only in the context of the procedural activities of the court; however, a systematic analysis of the Code, departmental regulations allows a broader consideration of the content the immediacy principle, as objects that conduct criminal proceedings, and the relevant rights of other participants in the process to use evidence, their verification and evaluation, decision-making and justification of decisions, participation in procedural actions (Groshovii and Kaplina, 1999).

This principle determines the responsibilities of those who conduct the process: to interrogate suspects, accused, witnesses, victims, experts, hear the opinions of experts, review the evidence, announce and investigate documents, audio and video recordings. These responsibilities correspond to the rights of other participants to submit evidence, personally inspect the materials of criminal proceedings, to receive copies of procedural documents, to participate directly in investigative and judicial actions.

The implementation of these provisions determines the rules formulated in various articles Criminal Procedure Code of Ukraine: procedural actions

and decisions, except as provided by law, are carried out by a person authorized to conduct criminal proceedings (Art. 9 Criminal Procedure Code of Ukraine); the court hearing in each case takes place continuously, except for the time allotted for rest (Part 1 Art. 322 Criminal Procedure Code of Ukraine); each case must be heard in the same court, when one of the judges is deprived of the opportunity to continue to participate in the hearing, he must be replaced by another judge, and the case begins from the beginning, except as provided in Part 2 Art. 319 Criminal Procedure Code of Ukraine; the court substantiates the verdict based only on the evidence that was examined at the hearing (Part 3 Art. 370 Criminal Procedure Code of Ukraine); it is not allowed to announce testimony in court, except in cases expressly provided by law (Art. 23 Criminal Procedure Code of Ukraine); the participation of the defendant in the court hearing is mandatory, except as expressly provided by law (Art. 323 Criminal Procedure Code of Ukraine); the trial is carried out with the obligatory participation of the parties to the criminal proceedings, except as provided by the Criminal Procedure Code of Ukraine (Part 2 Art. 318 Criminal Procedure Code of Ukraine) (Criminal procedure code of Ukraine, 2012).

From the above it gave posibility to see that the principle of immediacy specified in many rules, obliging the court, pre-trial investigation authorities to act in such a way as to establish important circumstances in the proceedings and ensure the actual exercise of their rights, including such important as the suspect protection. It is in the process of direct examination of evidence by the court that opportunities are created for the accused to refute or mitigate the accusation, use his right to ask questions to the person testifying against him, draw the judges' attention to the weaknesses of individual evidence in terms of their requirements in the case.

Based on the current version Art. 23 Criminal Procedure Code of Ukraine, other articles detailing the principle of immediacy, we can conclude that there are two elements in its structure: personal perception of evidence by participants examining them, and justification of the decision by evidence examined and evaluated personally. It should be noted that the name of the principle in the current version – «immediacy of the study of testimony, things and documents» narrows the true meaning of this principle, based on the provisions of the constituent parts Art. 23 Criminal Procedure Code of Ukraine. It is obvious that paragraph 16 of Part 1 Art. 7 Criminal Procedure Code of Ukraine, and Art. 23 of the Code define the relevant principle as the immediacy of the study of testimony, things and documents. At the same time in the provisions of Parts 1, 2 Art. 23 Criminal Procedure Code of Ukraine is a direct study of the evidence, which according to the current Code (Part 2 Art. 84), in addition to the above, also include the conclusions of experts. It is believed that this lack of legislative technique in general does not affect the perception of the normative content of the principle of

immediacy, taking into account the mentioned source, because, as is known from the general theory of law, the rule of law does not always coincide with the article. some set of prescriptions of articles. In our case it is Art. 84, 101 Criminal Procedure Code of Ukraine (Dekhtyar, 2014).

3.2. Stages of criminal proceedings to which the principle of directness of research of indications, things and documents extends

Normative consolidation of the immediacy of the study of testimony, things and documents as one of the general principles of criminal proceedings (paragraph 16 of Part 1 Art. 7 and Art. 23 Criminal Procedure Code of Ukraine) necessitates a review of the stages of criminal proceedings to which it applies. Although Art. 23 Criminal Procedure Code of Ukraine reveals the main elements of the content of this principle only in relation to court stages, but Part 1 Art. 7 Criminal Procedure Code of Ukraine stipulates that the content and form of criminal proceedings must comply with the general principles of criminal proceedings (Criminal procedure code of Ukraine, 2012).

This approach of the legislator to determine the role of the general principles of criminal proceedings suggests that during the trial in the first instance the principle of immediacy of the testimony, things and documents is implemented in full taking into account the features defined by the Criminal Procedure Code of Ukraine and its implementation in other stages. criminal proceedings, including during the pre-trial investigation, have a significant specificity due to the significant number of exceptions to the general rules on personal perception and evaluation of evidence (Dekhtyar, 2013).

As rightly noted by N. Cherkasova, direct examination of evidence, which is carried out at the stages of pre-trial investigation and trial, are two independent forms of research (Cherkasova, 1993). A thorough analysis process of proof at these two stages reveals significant differences in the study of evidence. In particular, at the stage of trial evidence is examined with the direct participation of the prosecution and defense (Part 2 Art. 318 Criminal Procedure Code of Ukraine), which allows them to personally perceive all evidence (both accusatory and exculpatory) simultaneously with the court and other participants in the trial. proceedings and be in the same conditions during the formation of its legal position, in contrast to the stage of pre-trial investigation, for which such a situation is not typical.

In order to expand the content of the principle of immediacy regarding the stage of pre-trial investigation in the legal literature, proposals were made to supplement it with provisions that both the court and the investigative body should take measures (within the limits and forms prescribed by law)

to establish direct contact with participants. This will allow them to directly perceive the course and results of procedural actions, to communicate freely, without intermediaries with the persons who exercise them, to fully use the rights to protect their legitimate interests and timely perform their duties (Shundikov, 1974). The principle of immediacy in relation to these participants is manifested in giving them the right to familiarize themselves with the materials of criminal proceedings.

It should be noted some positive changes in this direction, due to the adoption in 2012 of the new Criminal Procedure Code of Ukraine. Thus, Art. 221 Criminal Procedure Code of Ukraine obliges the prosecutor, investigator in the pre-trial investigation at the request of the defense, the victim, the representative of the legal entity in respect of which the proceedings are conducted, to provide them with pre-trial investigation materials (with some exceptions). the person performing it has the right to make the necessary extracts and copies.

In accordance with Part 6 Art. 223 Criminal Procedure Code of Ukraine investigative (search) action is carried out at the request of the defense, the victim, the representative of the legal entity that initiated it, and (or) its defense counsel or representative, except when due to the specifics of the investigative (search) action it is impossible the person refused to participate in it in writing (Criminal procedure code of Ukraine, 2012).

The need to distinguish between pre-trial and forensic evidence was one of the first after the adoption of the new criminal procedure legislation of Ukraine pointed out by M. Shumylo – the evidence in the pre-trial proceedings will be only for the investigator and the prosecutor, but probable for the defense counsel and the court. The structure of criminal proceedings under the Criminal Procedure Code of Ukraine, the scientist rightly notes, provides that in the course of the pre-trial investigation materials are collected that can be recognized as evidence only by the court (Shumilo, 2013).

Interpretation of these rules Art. 95 (Testimony) and 225 (Interrogation of a witness, a victim during a pre-trial investigation in court) Criminal Procedure Code of Ukraine allows us to draw the following conclusions:

1) testimony provided during the pre-trial investigation is relevant only to substantiate the procedural decisions of the investigator and prosecutor (except for those testimonies obtained in accordance with Art. 225 Criminal Procedure Code of Ukraine). If the interrogation is recorded by technical means, the text of the testimony may not be entered in the relevant record of the interrogation, provided that none of the participants in the proceedings insists on it.

   In this case, the protocol states that the testimony is recorded on the media attached to it (Part 2 Art. 104 Criminal Procedure Code

of Ukraine). This simplification procedural recording of testimony during the pre-trial investigation is due, in particular, to the fact that they have no probative value in court, and therefore it makes no sense to record them in writing subject to technical means (of course, if the participants do not insist);

2) court decisions may be based only on those testimonies that were directly perceived: 1) by the court – during the trial; 2) by an investigating judge – during the pre-trial investigation, which is allowed in exceptional cases related to the need to obtain the testimony of a witness or victim, if due to the danger to life and health of the witness or victim, their serious illness, the presence of other circumstances may prevent their interrogation in court or affect the completeness or accuracy of the testimony (Art. 225 Criminal Procedure Code of Ukraine).

3.3. Investigating judge as a subject of examination of testimony, things, documents and expert opinions

One of the biggest restrictions on human rights and freedoms during the pre-trial investigation is the application of measures to ensure criminal proceedings. When studying the materials with which the prosecutor substantiates the need to apply a measure of criminal proceedings to a person, the investigating judge is faced with an extremely difficult and important task: to find a balance between protecting the person, society and the state from criminal offenses. On the other hand, to ensure the restoration and protection of the rights, freedoms and legitimate interests of the person appearing before the investigating judge, so that no innocent person is subjected to procedural coercion, in fact, to perform the tasks of criminal proceedings. In our opinion, this can be achieved only by making procedural decisions after direct examination and evaluation of the evidence provided by the parties, which, unfortunately, is not always the case with investigative judges.

We agree with the position V. Nor and M. Shevchuk that the burden of proving the existence of grounds for choosing a measure of restraint of a particular type rests with the prosecutor. The limited interpretation of the prohibition to use evidence obtained in violation of the requirements of criminal procedure law to substantiate suspicion when deciding on the choice of a measure restraint, of course, greatly facilitates the burden of proof on the prosecution and the activities of an investigating judge who does not wants to complicate the work for himself (Nor and Shevchuk, 2019).

Note that now oppose the opposite position. A. Panova notes that in Part 1 Art. 94 Criminal Procedure Code deals with the mental and intellectual

activity of the investigator, prosecutor, investigating judge, which consists in their subjective perception of factual data, as well as evaluation of this information according to their inner conviction to make a decision in criminal proceedings. Accordingly, such an assessment is purely subjective, which does not involve the adoption of a procedural decision by these subjects to recognize such facts as evidence, because they acquire the value of evidence only on the basis of their interpretation by the court (Panova, 2017).

We consider this position of the scientist to be wrong, because, in our opinion, it directly contradicts the imperative prescription contained in Art. 94 Criminal Procedure Code, which obliges the investigating judge to evaluate each piece of evidence. Evidence at the stage of pre-trial investigation exists regardless of «their interpretation by the investigating judge or court», and the only way to legally exclude them from the materials of criminal proceedings is to assess them (Panova, 2017).

The existence of different approaches to the evaluation of evidence by the investigating judge in the theory of criminal procedural law obviously results in the introduction of contradictory and sometimes erroneous practices in law enforcement. In this regard, it is logical that scientists try to investigate this problem in more detail.

Article 94 of the Code of Criminal Procedure contains provisions on the evaluation of evidence in criminal proceedings, which oblige the investigating judge on his inner conviction, which is based on a comprehensive, complete and impartial examination of all circumstances of criminal proceedings, to assess each piece of evidence. admissibility, reliability, and the totality of the collected evidence – in terms of sufficiency and interrelation for the adoption of the relevant procedural decision.

In this case, for the latter, no evidence has a predetermined force. Such a prescription Art. 94 Criminal Procedure Code can not be interpreted either literally / philologically, nor logically-substantive method, other than the obligation of full and comprehensive assessment by the investigating judge of all evidence submitted to him by the parties to the criminal proceedings, which should ultimately be the basis for a proper decision. on the basis of own, formed on the basis of evaluation of evidence, internal conviction. Otherwise, what sources (information), other than evidence, should the investigating judge be guided by when making the appropriate decision?

In accordance with the principle of immediacy of the examination of testimony, things, documents and expert opinions, the investigating judge has no right to substantiate court decisions with testimony given to the investigator or prosecutor, or to refer to them. The court may base its conclusions only on the testimony that he directly received during the hearing or which were obtained in the manner prescribed by Art. 225

Criminal Procedure Code, that is during the interrogation of a witness, a victim during the pre-trial investigation in court.

Considering the rules Art. 225 Criminal Procedure Code of Ukraine as a new institution – the interrogation of a witness or victim by an investigating judge during the pre-trial proceedings, the authors of scientific and practical commentary to the Criminal Procedure Code of Ukraine edited by V. Tatsiy, V. Pshonka and A. Portnov believes that its existence is an exception to the general rule of the immediacy of the study of evidence (Tatsiy *et al.*,, 2012).

Partially sharing this position, it should be noted, Part 1 Art. 225 Criminal Procedure Code of Ukraine provides for interrogation by an investigating judge in the presence of the parties to criminal proceedings, which allows both the investigating judge and the parties to personally take the testimony of a witness, the victim. Exceptions to the general rule on the presence of the parties to criminal proceedings are two cases specified in Part 1 Art. 225 Criminal Procedure Code of Ukraine: 1) non-arrival of the party, who was duly notified of the place and time of the court hearing, to participate in the interrogation; 2) the absence of a party to the defense, if at the time of the interrogation no person was notified of the suspicion in this criminal proceeding.

In these cases, the testimony of the witness, the victim is perceived directly by the investigating judge, and in respect of one or both parties to the criminal proceedings is limited to the principle of immediacy of the examination of testimony, things and documents.

The Supreme Court of Ukraine gives guidance to its decisions on the principle of immediacy and the procedure for its implementation (Resolution of the Supreme Court of 05.02.2019 in case № 127/23722/15-k), pointing to the need to apply Art. 23 Criminal Procedure Code in the work of the investigating judge. This is due to the fact that the immediacy of the perception of evidence makes it possible to properly investigate and verify them (both each piece of evidence separately and in conjunction with other evidence), to assess them according to the criteria set out in Part 1 Art. 94 Criminal Procedure Code, and to form a complete and objective view of the facts of a particular criminal proceeding.

Failure to comply with the principle of immediacy violates other principles of criminal procedure, including the presumption of innocence and proof of guilt, ensuring the right to defense, adversarial parties and freedom to present their evidence and to prove their persuasiveness before a court. Therefore, the principle of immediacy is an integral element of the procedural form of the trial, and its non-compliance with the court, given the content of Part 2 Art. 23 and Art. 86 Criminal Procedure Code, means that evidence that was not the subject of direct investigation of the court can not be considered admissible and taken into account in the court

decision, except as provided by this Code, and therefore the court decision in accordance with Art. 370 Criminal Procedure Code cannot be recognized as lawful and reasonable (Resolution of the Supreme Court of 12.02.2019 in case № 754/7061/15).

Thus, the basis for the evaluation of evidence and direct study of their sources, although perhaps, at first glance, unsystematic, but was laid by the legislator in the current Criminal Procedure Code of Ukraine. Using Art. 26 Criminal Procedure Code, which provides that the investigating judge in criminal proceedings decides only those issues that are submitted to him by the parties and referred to his powers Criminal Procedure Code, and the principle of adversarial, the content of which is disclosed in Art. 22 Criminal Procedure Code, the parties to criminal proceedings must apply for a direct examination of testimony, things and documents, as well as the recognition of evidence inadmissible to the investigating judge, without waiting for the latter's initiative. V. Nor and M. Shevchuk argue that regardless of the presence parties motions to the criminal proceedings, the investigating judge must decide to declare the evidence inadmissible in case of obvious signs of their inadmissibility (Nor and Shevchuk, 1945).

The basis for this is Part 4 Art. 193 Criminal Procedure Code, according to which at the request of the parties or on its own initiative, the investigating judge has the right to hear any witness or examine any material relevant to the issue of precautionary measures. In addition, Part 3 Art. 95 Criminal Procedure Code establishes the obligation of a witness / expert to testify to an investigating judge in the manner prescribed by this Code (Criminal procedure code of Ukraine, 2012).

Thus, the investigating judge is explicitly mentioned in the Code of Criminal Procedure as the subject of evaluation and direct examination of evidence in criminal proceedings. The need to establish during the judicial review the presence or absence of facts and circumstances relevant to criminal proceedings and subject to proof by direct examination of the sources of evidence and evaluation of evidence of relevance, admissibility, reliability, as well as the totality of evidence collected in terms of sufficiency and relationship for the adoption of the relevant procedural decision is not in doubt.

Otherwise, the investigating judge will not be able to perform the task of criminal proceedings and the actual function of judicial control and become a barrier to insolvent criminal proceedings, which already at the stage of pre-trial investigation do not contain substantiated / proved by appropriate, admissible and sufficient evidence of suspicion is the official beginning of bringing a person to criminal responsibility, as well as other circumstances, the proof of which is required by law. As a result, this will violate the requirements Art. 29 of the Constitution of Ukraine and Art. 370 Criminal Procedure Code. It will be recalled that the decision made on

the basis of objectively clarified circumstances, which is confirmed by the evidence examined during the trial and assessed by the investigating judge, in accordance with Art. 94 Criminal Procedure Code.

3.4. The judge's inner conviction during the examination and evaluation of evidence

The principle of immediacy of the examination of evidence provides for the possibility of a judge with the participation of the parties to the proceedings to conduct proceedings on the basis of personal and direct acquaintance, examination of evidence without the assistance of certain subjects of criminal proceedings or, as rightly noted by B. Tertyshnyk, «without any intermediate links» (Tertyshnyk, 2014).

The court is not entitled to substantiate court decisions with evidence that has not been directly investigated (heard, studied, verified) with the participation of the parties during the trial. It is clear that in adversarial proceedings the court does not collect evidence of guilt or innocence of the accused on its own initiative, but the obligation of the court to verify the evidence submitted by the parties is undeniable.

It is for this purpose in the adversarial process that the active role of the court can be traced, for example, in the appointment of expertise. Thus, Part 2 Art. 332 Criminal Procedure Code of Ukraine authorizes the court by its decision to entrust the examination to an expert institution, expert or experts, regardless of the petition, if the court provided several conflicting expert opinions, and interrogation of experts failed to eliminate the identified contradictions; during the trial there were grounds for an inpatient psychiatric examination. Thus, it can be concluded that in order to make a lawful, reasonable and fair decision, the court is obliged to take certain active actions on its own initiative to directly evaluate the evidence and perform its procedural function based on internal conviction (Girovich, 2015).

M. Strogovich considers the concept of «inner conviction of the judge» as a process of mental activity, an act of thinking associated with awareness of the circumstances of the case (Strogovich, 1968). V. Konovalova and V. Shepitko believes that the concept of «inner conviction» in its meaning expresses subjective confidence in accordance with the subjective assessment of objectively existing circumstances or facts. The subjectivity of inner conviction as its form not only does not exclude, but on the contrary, presupposes its objective meaning. Therefore, inner conviction is one of the forms of reflection of objective reality. As a reflection of objective reality in its content, inner conviction, according to scholars, does not play the role of a criterion for the truth of what is known in criminal proceedings. The criterion of truth in this area, as in all other areas of knowledge, according to scientists, is practice (Konovalova, 2005).

Yu. Orlov believes that inner conviction can act as a method of evaluating evidence and as a result. The scientist notes that «... in the case of impossible direct experimental verification of the conclusion, the subjective criterion often acts as one of the derivatives of objective, as a concentrated expression of collective experience, social practice. A similar function is performed by the inner conviction of the subjects of proof, which, on the one hand, is a method of evaluating evidence, and on the other – the result of this evaluation, one of the criteria for its correctness» (Orlov, 1981).

V. Tertyshnyk, notes that a judge's inner conviction is a state of consciousness of a judge, which reflects the result of his subjective mental activity in the process of evaluating evidence in order to reliably establish the facts of a particular criminal case, which is the subject of evidence decision (Tertyshnyk, 2014).

There is no doubt that during the criminal proceedings the judge conducts research activities, checking and evaluating the available evidence, the result of which is the reproduction of a fragment of reality, reconstruction of all the circumstances necessary for the court to decide during the court decision. Thus in the course of knowledge of factual circumstances of business the general laws of process of thinking which take place and in other spheres of a society come to light. Therefore, the evaluation of evidence as one of the stages of proof is a kind of mental activity.

Thus, in our opinion, the inner conviction of a judge should be considered as a complex phenomenon. It's not just an individual and subjective feeling of confidence. Of course, judges' beliefs are individual and subjective in the sense that they are made up of individuals who decide the case. But this legal category should not be considered unilaterally and only in psychological or only legal aspects in any case.

The convictions of judges are based primarily on their legal awareness, the whole set of views, ideas, sense of justice (as a subjective factor in the formation of internal convictions of judges), as well as their direct examination during the criminal proceedings, oral hearing of participants in criminal proceedings (as effective factor).

In administering justice, a judge is obliged to form an inner conviction not as a personal perception of certain phenomena of objective reality, but as a professional vision of the facts obtained as a result of procedurally appropriate and admissible actions. According to the case law of the European Court of Human Rights, it is worth noting that the difference between facts and evaluative judgments is that facts need to be proved and evaluative judgments do not. Thus, the formation an inner conviction of a judge during criminal proceedings will take place as a result of proving or disproving the facts enshrined in the procedural sources of evidence provided by the parties.

Conclusions

Summarizing the above, it should be noted that the principle of immediacy of research of testimony, things and documents in criminal proceedings structurally consists of two elements: personal perception of evidence by participants examining it, and justification of the decision by evidence examined and evaluated personally. The immediacy of the examination of evidence, carried out at the stages of pre-trial investigation and trial, are two independent forms of research, which have differences in nature.

The principle of direct examination of testimony, things and documents at the stage of pre-trial investigation imposes on the investigator, prosecutor, and in cases provided by the Criminal Procedure Code of Ukraine and the investigating judge, the obligation to directly examine the evidence. Immediacy in their examination of the evidence is that the investigator, prosecutor must: personally conduct in a particular criminal proceeding investigative (search) actions, and in cases provided by the Criminal Procedure Code of Ukraine – as well as covert investigative (search) actions, directly perceiving in the course of their proceedings, factual data that allow to establish the presence or absence of facts and circumstances that are relevant to the criminal proceedings and are subject to proof; make procedural decisions based on the assessment of personally perceived factual data.

The specificity of the implementation of the principle of immediacy of the study of testimony, things and documents is inherent in the stage of pre-trial investigation and is due to significant restrictions on the personal perception of evidence by the investigator, prosecutor. The range of such restrictions is quite wide and is determined both by the circumstances Criminal proceedings and the place where the criminal offense was committed, and by the powers of the prosecutor and the head of the pre-trial investigation body. At the same time, the existence of these restrictions does not affect the duty of the investigator, prosecutor to directly investigate, verify and evaluate all procedural evidence in the materials of a particular criminal proceeding when making procedural decisions.

At the stage of trial, the basic factor in the formation of the judge's own evaluation of evidence, along with the procedural conclusions obtained during the proceedings, is the so-called internal conviction, which is the perception and understanding of perceived information through the prism of knowledge of substantive and procedural law. that he gave a correct assessment of all the evidence available in the proceedings and that the conclusion he had drawn from the examination of all the issues was correct, complied with the requirements of law, justice and in no way restricted human rights.

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Legal regulation of the police: international aspects

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Abstract

Based on the analysis of theoretical developments, provisions of current legislation, generalizations of police practice and through the scientific method and philosophical refelexion, the article reveals the essence of the legal regulation of the police at the international level. The experience of democracies developed in the field of legal regulation of police activities has been studied to improve the execution of law enforcement functions by the Ukrainian National Police. To harmonize national legislation in the field of management in police forces and units with international standards, proposals were made to improve the legal regulation of the activities of the Ukrainian National Police. The common characteristics of police structures in the countries of the Roman-Germanic legal family have been revealed. In conclusion, it is based on the desirability of adopting the Polish experience of structuring and legal regulation of the police forces, without giving them paramilitary features. It is argued about the advisability of defining in the Regulations of the National Police the main tasks related to the provision of police services.

Keywords: police officers; law enforcement; surveillance; legal regulation; police services.

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Regulación legal de la policía: aspectos internacionales

Resumen

Basado en el análisis de desarrollos teóricos, disposiciones de la legislación vigente, generalizaciones de la práctica policial y mediante el método científico y la refelexion filosófica, el artículo revela la esencia de la regulación legal de la policía a nivel internacional. Se ha estudiado la experiencia de las democracias desarrolladas en el ámbito de la regulación jurídica de las actividades policiales a fin de mejorar la ejecución de las funciones de aplicación de la ley por parte de la Policía Nacional de Ucrania. Con el fin de armonizar la legislación nacional en el ámbito de la gestión en los cuerpos y unidades policiales con las normas internacionales, se formularon propuestas para mejorar la regulación jurídica de las actividades de la Policía Nacional de Ucrania. Se han revelado las características comunes de las estructuras policiales en los países de la familia jurídica romano-germánica. Como conclusión se fundamenta la conveniencia de adoptar la experiencia polaca de estructuración y regulación legal de los cuerpos policiales, sin darles rasgos paramilitares. Se argumenta sobre la conveniencia de definir en el Reglamento de la Policía Nacional las principales tareas relacionadas con la prestación de los servicios policiales.

Palabras clave: agentes policiales; aplicación de la ley; vigilancia; regulación legal; servicios policiales.

Introduction

At the present stage of development of our society, the construction of the rule of law, the role and importance of legal regulation of policing become especially relevant, because the main feature of the rule of law is a high legal regulation of social relations.

The purpose of ensuring the realization of citizens' rights and freedoms in their relations with the police is to determine the main forms and activities of their structural units and officials that would ensure the daily democratic regime of these relations based on the inviolability of constitutional human and civil rights and freedoms. The efficiency of the investigated type of activity depends on the perfection of normative regulation of police activity, clarity of legal prescriptions, existence of the developed system of the legislation and the corresponding by-laws in this sphere (Kalayanov, 2015).

Ukraine is on the path to integration into the European Community. In this regard, our state has carried out a number of reforms in the political, social, economic, financial and law enforcement spheres, and first of all - in the internal affairs bodies. One of the main tasks of these reforms is to

improve the system of law enforcement agencies, including law enforcement agencies. After all, measures to reform the law enforcement system must be consistent with measures to improve the entire legal system of Ukraine. At the same time, the main directions of reforming the law enforcement system should not differ from other components of state and legal reform, namely parliamentary, administrative, municipal reforms, as well as certain reforms of the economic and political systems of Ukraine. An important area in this process is the analysis and implementation of best foreign experience in the legal regulation of policing.

Ensuring the proper functioning of the modern state as an association of citizens in society for the purpose of its organization, as well as defining the priority tasks of development in the initial stages requires clear and meaningful political and legislative regulations (IN EUROPE On November 7, 2015, the Law of Ukraine "On the National Police" entered into force. This was the beginning of a new historical round in the development of Ukraine as a democratic European state. However, at the same time, the state faced a number of new problems. The functioning of the newly established National Police in Ukraine involves a large number of issues related to the legislative and regulatory regulation of this process.

The urgency of these issues is further enhanced in view of the reform of the law enforcement system that is underway in Ukraine today and which cannot be successful without a proper general theoretical basis.

1. Methodology of the study

The methodological basis of scientific work were general philosophical approaches, as well as general scientific, special scientific and own legal methods. The dialectical approach allowed using the principles of objectivity, comprehensiveness, development, specificity and dialectical contrast to substantiate the natural nature of the understanding of the role of police, to trace the patterns and current trends in their formation in today's conditions. Based on the anthropological approach, the essence of the functioning of the system of police bodies of a democratic state, the focus of which should be - the individual, his rights and freedoms.

Using the methods of the logical method, the existing approaches in science to the disclosure of the content of police bodies are generalized. Using a systematic method, the place of the police in the system of law enforcement agencies in particular and public authorities in general was revealed, the content of the system of bodies of the National Police of Ukraine was clarified. The formal-legal method was used during the study of international documents that determine the standards of law enforcement, as well as the national legislation of Ukraine, the judicial practice of

Ukraine on the exercise of its powers by the police. The comparative legal method allowed to carry out the comparative analysis of practical models of realization of law enforcement function of the state existing in different countries, etc.

2. Analysis of recent research

Leading scientists such as A. Bilas (Bilas, 2016), D. Kalayanov (Kalayanov, 2010), O.Negodchenko (Negodchenko, 2003), and M. Pykhtin made a significant scientific contribution to the development of the topic of the law enforcement function of the state and the system of its proper provision. (Pykhtin, 2009), O. Pronevych (Pronevych, 2011), V. Sichkar (Sichkar, 2007), D. Bayley, E. Bittner (Bayley and Bittner, 1984), P. Hamula (Hamula, 2015), R. Mawby (Mawby, 1999) and others.

However, despite the significant scientific achievements on various aspects of legal regulation of law enforcement agencies, there is currently a lack of comprehensive scientific research on this issue in the context of a new paradigm of policing. Democratic transformations that take place in all spheres of public life in Ukraine necessitate the study and implementation of best European practices in the process of legal regulation of policing.

The purpose of the scientific article is to analyze the theoretical aspects of legal regulation of police activities, in particular in some European countries and the United States, which will allow to use the positive experience in the process of reforming the National Police of Ukraine.

3. Results and discussion

3.1. The essence of policing and its legal regulation

It is difficult to trace the names of law enforcement agencies in different countries, because such names are in many cases historical. Moreover, similar names – police, guards, gendarmerie, constables, marshals, sheriffs - in different countries may be associated with different law enforcement functions (Medvedev, 2014). Studying the international experience of the law enforcement system, it is important to establish analogues to the domestic concept of «law enforcement agency». In European countries, the criterion for selecting law enforcement agencies from the total mass of state bodies is, first of all, the range of tasks, which determines the set of state bodies called to perform these tasks. Usually, law enforcement agencies are allocated in accordance with the main functions of law enforcement (Chetverikov, 1997).

In continental Europe, the closest term to «law enforcement» is «police». It is based on the ancient Greek word «polythea», which was borrowed from Latin and later became widespread in Europe. In the original, it meant the management of the polis (ancient Greek city), ie public administration by the modern definition. This «general management» meaning of the word «police» persisted until the 19th century, when under the influence of the rapid development of the modern law enforcement system of many European countries and their colonies, it gradually «narrowed» to modern understanding (Mawby, 1999).

In general, the police in the foreign world is one of the oldest state institutions, the importance of which has always been and remains enormous for society as a whole and for all political regimes without exception (Sichkar, 2007). The concept of «police» is a polysemantic phenomenon and a basic category of modern police law theory. At different stages of the evolution of the medieval state, this category was used to denote «the state of an orderly society», «management of public affairs», «good order», etc. (Pronevych, 2011). D. Kalayanov found out that in the modern sense the term «police» began to be used relatively recently. Etymologically, the word «police» is related to the Greek «polis», ie city, and the term «politia» means the government of the city and the order that it should provide. For a long time, the term «police» was used in French to denote a set of administrative measures of the government. The transformation of the police into a body of law enforcement in the state took place in the era of absolutism (Kalayanov, 2010).

For countries with an Anglo-Saxon law enforcement system, the term «police» is also widely used to refer to certain government agencies. At the same time, law enforcement in general and law enforcement agencies as a set of institutions are defined by another term - «law enforcement». The literal translation into Ukrainian sounds like «coercion to law» or «legal coercion». The police in this system is one of the institutions that exercise legal coercion. However, it should be understood that in English the word «enforcement» has a positive sound and means not so much coercion as the use of force or authority with a certain positive purpose (Hamula, 2015).

In view of the above, the position of KS Belsky, who defined that the police and police law are mandatory elements without which the existence of the rule of law is impossible (Bayley and Bittner, 1984), is not in doubt.

We consider it expedient to dwell on the peculiarities of the legal regulation of police activity. After all, special legal knowledge about the features and manifestations of law, legal regulation, achieved by jurisprudence, allows more consciously and accurately clarify social processes that are subject to legal influence by the state and require their legal registration while filling its legal content (Selivanov, 1997).

In the scientific legal literature, legal regulation (from the Latin reguläre - to direct, organize) means one of the main means of state influence on public relations in order to organize them in the interests of man, society and the state. Legal regulation is a kind of social regulation, which is provided by a specially created state mechanism.

The main components of its mechanism are: a) the rules of law fixed in laws and other legal acts, which determine the model of possible and necessary behavior of the subject of public relations (rules of law - the basis of the mechanism of legal norms); b) legal facts, ie specific life circumstances associated with the implementation, change or termination of legal relations; c) the actual legal relations, ie social relations, mediated by the rule of law; d) acts of realization of the right of obligations of subjects of public relations, ie actions of their subjects within the limits of instructions of the corresponding legal norms; e) legal sanctions against violators of the law (Shemshuchenko, 2007).

The study of the problem of legal regulation of police activities involves clarifying the range of social relations that arise in it, ie determining the subject of legal regulation. It covers all social relations, which objectively, by their nature can be subject to regulatory and organizational influence and in these socio-political conditions require such influence, which is carried out through legal norms and all other legal means.

A systematic view of the role of law in regulating the police allows us to conclude that with the help of legal norms receives a legal basis: the system of powers of police officers to exercise their rights; forms, types, directions and admissible limits of police activity; system of objects and subjects of law enforcement activity of police officers; distribution of supervisory functions between units of a particular unit, etc.

Legal regulation of the activities of the National Police is provided by a significant number of regulations, which differ from each other in many respects: name, legal force, procedure for adoption, entry into force, etc. These include: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Code of Conduct for Law Enforcement Officials, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, inhuman or degrading treatment or punishment, «Code of Principles for the Protection of All Persons Arrested or Imprisoned in Any Form», «Basic Principles on the Use of Force and Firearms by Law Enforcement Officials», «Paris Charter for a new Europe», «European Convention for the Protection of Human Rights and Fundamental Freedoms», etc.

The beginning of the international or global origins of the police began with the adoption of the Code of Conduct for Law Enforcement Officials

adopted approved by UN General Assembly Resolution 34/169 of 17 December 1979, which states in Article 1: law enforcement officers must always perform their duties under the law. , serving society and protecting all people from wrongdoing, in accordance with the high level of responsibility required by their profession. These provisions can be considered the first internationally established foundation for the development of the police and the cooperation of these bodies between many states.

Article 2 states that in the performance of their duties, law enforcement officials must respect and protect human dignity, uphold and protect human rights in relation to all persons. The article reveals the protection of those human rights that are defined and protected by national and international law. The Parliamentary Assembly of the Parliamentary Assembly of the Council of Europe № 690 (1979) «On the Police Declaration» concluded that the full realization of human rights and fundamental freedoms guaranteed by the European Convention on Human Rights and other national and international instruments is a necessary basis for a peaceful a society that enjoys the benefits of order and public safety (Ilnytsky, 2016).

Recently, the countries of the European Union have significantly changed the legal basis for the operation of police services. At present, they are clearly divided into norms, rules and standards, which are obligatory for the organization of police services of all members of this community, and the national police legislation, which is specific to each country of the European Union, taking into account its specifics.

The first group includes documents regulating the establishment of the European Police Office (Council Decision of 06 April 2009 on the establishment of the European Police Office (Europol), Council Decision of 28 February 2002 on the establishment of Eurojust to strengthen the fight against serious crime, etc.). The second group includes national legislation governing the activities of the police services of each country of the European Union. Based on these and other acts, the EU police have made significant progress in protecting citizens' rights, combating crime, terrorism and other offenses, using a variety of activities, mainly administrative and legal, as EU police services are police (administrative). powers (Kalayanov, 2010).

Foreign experience in the organization of policing proves that the main elements of the system of legal regulation are, first of all, the rules of law, ie mandatory, formally defined rules of conduct that come from the state and are protected by it. Thus, reforming the system of bodies of the National Police of Ukraine requires appropriate legal support, which provides for the development and adoption of new regulations, amendments to existing legislation, as well as bringing the legal framework in line with international law on police activities.

Research of legal bases of activity, structure and functions of bodies of National police of Ukraine and foreign countries is actualized owing to need to specify directions of reforming and development of police bodies and to define possible ways of borrowing and use of positive experience of foreign countries for reform and development of bodies of National police of Ukraine. and the role in law enforcement systems.

3.2. Foreign experience of normative-legal regulation of police activity

At present, Ukraine must take into account international standards of legal regulation in the field of policing and use the experience of foreign countries that have a positive development and successful reform of law enforcement agencies, including the police. Let's analyze the legal regulation of the police in some countries of the Romano-Germanic and Anglo-Saxon legal family.

As for the protection of citizens and their property, the maintenance of public order and the rule of law, in France this is the competence of the police. The French police consist of two centralized institutions, the National Police and the Gendarmerie, which have the same powers but different jurisdictions. Thus, the French National Police carries out law enforcement, patrolling, road control, identity checks; as well as under the supervision of judicial authorities carries out investigative and investigative activities. The French gendarmerie is a police force under the Ministry of Defense. The French gendarmerie is a paramilitary body created to maintain public safety and is designed to guarantee the protection of the population and their property. It is also a body of information, prevention and salvation. In addition to the above tasks, it may be assigned additional responsibilities related to the armed protection of the population. The gendarmerie performs the functions of the police in rural areas with a population of not more than 20,000 population (Law enforcement authorities of France).

According to the 1975 Constitution, power in Sweden is divided into legislative (represented by the king and parliament), executive (represented by the king through his ministers) and judicial (courts). Parliament is responsible for legislative activity and thus sets the framework for policing. In turn, the police report to the Minister of Justice, who is empowered to organize its activities. He performs these functions through the Chief Commissioner of the Swedish National Police, the Police Commissioner in Stockholm and the Chiefs of Police in the cities. In addition, the Swedish police work closely with local authorities and citizens to carry out their tasks (Pykhtin, 2009).

According to the 1998 Regulation on the National Police and the National Security Service, the police apparatus consists of: the Chief of

the National Police, the Chief of the Security Service, the Deputy Chief of the Security Service, the Chief of Police, the Superintendent of Police, the Senior Superintendent, the Police Commissioner, the Police Inspector and police constable (Behörighet som polisman).

The main tasks and functions of the police are regulated by the «Police Act» of 1997, which include: prevention and detection of criminal acts and other violations of public order or security violations; monitoring of public order and safety and intervention in case of violation; investigation and prosecution of crimes subject to public prosecution; providing public protection, information and other assistance where such assistance can be provided by the police; completion of activities received by the police station in accordance with special regulations (Polislag, 1984).

The National Police of the Czech Republic is the only service in the country that is exclusively in charge of all issues of public safety and criminal investigations. The structure of the Czech police is in full accordance with the administrative division of the country. It has 8 regional and 86 district offices. This most important service for the protection and enforcement of law and order is the President of the Police. It is directly subordinated to 4 deputies and 8 regional offices. Each department has its own operations center, forensic laboratory, and human resources, supply, and health departments. 86 district administrations mentioned above are subordinated to the regional administration. The latter, in turn, unite 620 local police units (Police in the Czech Republic).

According to the Czech Police Act of 17 July 2008, the Czech police have the following functions: police officers must observe the rules of courtesy and respect the honor and dignity of both themselves and their own; in the event of threats or breaches of internal order and security, the police officer is obliged to take action within his or her jurisdiction or take other measures that do not contradict the law; ensure that no one is injured as a result of the actions of the police; the police, in carrying out their tasks, cooperate with the armed forces, security forces and other state bodies, as well as with legal entities and individuals; ensuring the security of objects, premises and persons protected; prevention of crimes and socially pathological phenomena; educational activities in the field of internal order and security; providing support, care and assistance to victims of crime; crisis prevention and settlement; carry out work with offenders and persons with socially pathological or similar behavior with risk (ZÁKON O POLICII ČESKÉ REPUBLIKY).

In Hungary, issues concerning the structure and functions of the police are regulated by the Law on Police, adopted in 1994, which organizationally divides the Hungarian police into the following services: the main ones are the criminal police; public order police; traffic police; administrative police; police protection of persons and property; special units for combating

terrorism, airport security, explosives service; police forces, courier service; auxiliary units – economic, information technology, human resources, official services, legal, medical, secretariat (Bilas, 2016). And the functions of the Hungarian police are: crime prevention, monitoring of the criminal situation in Hungary; detection of crimes in the economic sphere and return of proceeds from crime; prevention and detection of offenses; state powers and law enforcement responsibilities; maintaining public order; fulfillment of responsibilities for the execution of sentences; provision of emergency measures, situations, threats of terrorism, etc. (Törvénya Rendőrségről, 1994).

In the context of studying the experience of law enforcement reform, given the similarity of historical development, it is advisable to refer to the experience of Poland, Latvia and Estonia.

The legal basis of the Polish police is a special law «On Police» from 06.04.1990, as well as a number of bylaws, namely: the order of the Council of Ministers «On methods of conduct in the exercise of certain powers of the police» from 26.07.2005. , the order of the Council of Ministers «About definition of cases, and also conditions and ways of application by police of means of direct coercion» from 17.09.1990, the order of the Minister of Internal Affairs and Administration «About armament of police» from 15.11.2000, the order of the Council of Ministers special conditions and methods of conduct in the use of firearms by police and the principles of use of firearms by police departments and subdivisions from 19.07.2005, order of the Minister of Internal Affairs and Administration «On police uniforms»from 20.05.2009 (Rozporzadzenie rady ministrow w spra okeslenia przypadkow oraz warunkow i spobov uzycia przez policjantow srodkow przymusu be immediate).

According to Article 2 of the Law on Police, the police consists of the following units: criminal police, investigative police, internal, preventive and auxiliary police in the organizational, logistical and technical spheres. The police include the judicial police. The detailed scope of tasks and principles of the organization of the judicial police is determined by the Minister responsible for internal affairs, in agreement with the Minister responsible for justice. The police also include: higher police, training centers and police schools; separate departments and divisions of anti-terrorist prevention; research institutes.

The functions of the police in accordance with Article 1 are: to protect the life and health of people and property from unlawful attacks that violate these goods; protection of public safety and order, including ensuring peace in public places and means of public transport and public transport, in traffic and in waters intended for public use; initiation and organization of measures aimed at preventing the commission of offenses and criminal phenomena and cooperation in this area with state bodies, local

governments and public organizations; conducting anti-terrorist activities within the meaning of the Law of June 10, 2016 on anti-terrorist activities; detection of crimes and offenses and prosecution of their perpetrators; protection of facilities that are members of the Council of Ministers, except for the premises for the Minister of National Defense and the Minister of Justice appointed by the Minister responsible for the Interior; supervision of specialized armed defense formations within the limits set by certain regulations, etc. (Ustawa o Policji).

Thus, the Polish law enforcement system is formed on the basis of international experience in the operation of law enforcement models, using its own, special approach. Given the large number of law enforcement agencies in Ukraine, it is advisable to adopt the Polish experience, including them in the police, without giving paramilitary features. We believe that such an approach would greatly simplify the understanding of their essence and optimize the constitutional and legal regulation of their activities.

The tasks of the Latvian police are to ensure individual and public safety, to prevent criminal offenses and other offenses, to detect crimes, to search for perpetrators of criminal offenses, and to provide assistance to institutions and individuals in protecting their rights. The police structure includes the state police, the security police, the municipal police and the port police. At the same time, the state police and security police within their competence perform their duties in the territory of the Republic of Latvia, the municipal police in the relevant administrative territory, and the port police in the ports (Hamula, 2015).

One of the effective reforms of the police in the post-Soviet space is the experience of police reform in the Republic of Estonia. National police bodies were formed here during the collapse of the USSR, when the Law «On Police» of September 20, 1990 (Bilas, 2016) was adopted.

The Estonian police structure consists of: police departments; police council; police prefectures; national specialized police bodies (central criminal police, security police, center of criminology and criminology) (Politseiseadus).

Analysis of the main activities of law enforcement agencies in European countries shows that the main task of almost all of them is to implement measures to combat crime. In the structure of all ministries of internal affairs there are divisions of criminal police (directorates, main departments, bureaus, departments) (Negodchenko, 2003).

In general, the analysis of regulations related to police activities in European countries allows us to identify standards and standards that have become the norm for democracies. Legitimacy, non-discrimination, compliance with the requirements of a democratic society and humanity should be considered the main principles in the activities of law enforcement

officers. The peculiarity of the implementation of these principles by European countries lies primarily in certain forms of realization of their rights and responsibilities by law enforcement agencies (Rudoy, 2004).

The experience of the Anglo-American legal family is also quite specific. Among the member states of the Anglo-American family, it is first necessary to single out England and the United States, which played a major role in shaping the legal family, as well as Canada, India, Australia, New Zealand and others.

As for the model of organization of police activities in the United States, in this country at the general federal level there is no single regulation to regulate police activities. Therefore, this issue is regulated in the relevant sections or articles of federal industry laws. The activities of the federal police are also regulated by departmental regulations - instructions, orders, guidelines for individual police functions. The regulations governing state police and local law enforcement agencies are state constitutions and laws, district law, city charters, and police ordinances of local departments.

The experience of the United Kingdom on the legal regulation of law enforcement is interesting. In this state, the status and system of state bodies are enshrined not in the Constitution (the basic law), as in most countries, but in several regulations and even in other (non-legal) sources, due to the legal system of Great Britain (Luchin *et al.*, 2012). The police, which is part of the British Home Office, play an important role in the life of English society. The organization of the police as a law enforcement agency is based on the administrative-territorial division of Great Britain. The British police are served by a number of central and regional services. Police functions are also performed by other bodies that do not belong to the Ministry of the Interior of the United Kingdom.

Thus, in the course of the study, we found that the police structures in the countries represented in our study have common features, namely the diversity of police systems and the presence of police bodies in different ministries and departments. The dominant type of police department in the law enforcement system of democratic countries is the model of «service to society», which is based on the paradigm of social partnership. The police officer should no longer play a repressive and autocratic role, but perform a positive, supportive function.

3.3. Analysis of the legislation governing the activities of the National Police of Ukraine

The current legal regulation of the National Police plays an important role, as the effectiveness of legal regulation in many cases depends on the perfection of its legal framework, clarity of regulations, the presence of a developed system of legal norms. Because legal norms ensure: 1) definition

of the system of police powers; 2) the distribution of functions between units of a particular body and their employees; 3) consolidation of the system of objects and objects of police activity of employees.

It should be noted that the legal norms governing police activities are contained in different in form, nature and legal force of regulations. As a form of existence of legal norms designed to regulate relations in the field of law enforcement policing, regulations are a way of fixing and their activities determine their position in the socio-legal dimension of the national legal system. It is with the help of normative legal acts that the content of legal norms, provisions of law enforcement practice, as well as in most cases individual prescriptions, decisions of individual officials are revealed.

For example, Article 3 of the Law of Ukraine «On the National Police» states that the police are guided by the Constitution of Ukraine, international treaties of Ukraine, the binding nature of which is approved by the Verkhovna Rada of Ukraine, this Law and other laws of Ukraine, acts of the President of Ukraine. and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine, as well as acts issued by the Ministry of Internal Affairs of Ukraine, other regulations (About the national police). Thus, the current legal norm indicates the legislative and regulatory acts of Ukraine that regulate police activities and determine the legal status of the National Police of Ukraine. Also, the Decree of the President of Ukraine «On the Symbols of the National Police of Ukraine» of December 9, 2015 № 692 established the emblem of the National Police of Ukraine, the flag of the National Police of Ukraine and official flags of territorial bodies, research institutions of the National Police of Ukraine (ABOUT SYMBOLS).

Today the main tasks of the National Police are defined by the current legal norms of Article 2 of the Law of Ukraine dated 02.07.2015 № 580-USH «On the National Police» (Constitution of Ukraine), and in paragraph 1 of the current Regulation on the National Police approved by the Government of Ukraine dated 28.10.2015 № 878 (On approval of the regulation on the ministry of internal affairs), contains other provisions that contradict the current legal norms of Article 2 of this Law.

In our opinion, it is necessary to amend paragraph 1 of the Regulation on the National Police, approved by the resolution of the Cabinet of Ministers of Ukraine of October 28, 2015 № 878. In particular, paragraph 1 of the Regulation should be submitted as follows: «1. The main tasks of the police are to provide police services in the areas of: 1) protection of human rights and freedoms, as well as the interests of society and the state; 2) ensuring public safety and order; 3) combating crime; 4) the provision, within the limits set by law, of assistance services to persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance».

It should be noted that in recent years in Ukraine the regulatory conflict continues, due to the inconsistency of scientific and legislative approaches to understanding the essence of police services. The state's position on the preservation of the term «police services» in institutional legislation is currently associated with the difficult prospect of reviewing the legislative, scientific and practical, including international, experience in the service activities of the National Police. This indirectly affects both the activities of the National Police and the attitude of society to its activities. This state of affairs is unacceptable given the existence in the world of a legally established mechanism for understanding the essence of police services and their provision in practice, which Ukraine still follows as a model.

The legal unregulation of the concept and content of police services is caused by the legislator's disregard for their basic principles and is not an obstacle to the current care of the National Police of Ukraine in their provision. In our opinion, one of the possible, albeit debatable, ways to resolve this issue would be to remove from the Law of Ukraine «On the National Police» and related legislation the term «police services», limiting the general indication that the National Police provides legislation, including services, the content, list and procedure for which are determined by law.

Changes in the regulatory framework, which should occur with changes in the structure of the Ministry of Internal Affairs of Ukraine, should be accompanied by appropriate changes to the regulations. However, recently the changes are reflected in only one legal act - the Law of Ukraine «On the National Police», which is the main normative document of the reform. This leads to a significant number of legal conflicts and gaps in the laws.

In Ukraine, the field of police law is at the stage of formation and definition of its own individual standards, and therefore there is an urgent need to harmonize the principles of law enforcement of Ukraine with world standards, which are enshrined in international regulations. The main European standards of policing are enshrined in Resolution № 690 (1979) of the Parliamentary Assembly of the Council of Europe «Police Declaration», adopted on 08.05.1979, Recommendation Rec (2001) 10 of the Committee of Ministers to member states of the Council of Europe «On the European Code of Police Ethics» of 19.09.2001; as well as in the relevant UN documents – UN General Assembly Resolution 34/169 «Code of Conduct for Law Enforcement Officials» of 17.12.1979; Basic principles of the use of force and firearms by law enforcement officials, adopted by the Eighth UN Congress on September 7, 1990.

Based on the analysis of the «Declaration on the Police» from 08.05.1979, the following standards of police activity can be distinguished: a police officer must perform his duties honestly, objectively and with a sense of self-worth; the police are a civil service; the police must fight

corruption; the police officer is obliged not to carry out the criminal order; a police officer should not assist in the prosecution of persons who have not committed any crime solely on the basis of their racial, religious or political affiliation; there must be a clear hierarchy of instructions in order to be able to track a police officer who has given an illegal order to his subordinates; the professional, psychological and material conditions in which the police officer performs his duties must protect his honor, dignity and impartiality and others (Declaration on the police: resolution № 690).

In our opinion, these standards should become the main ones in ensuring the implementation by the National Police of Ukraine of the tasks assigned to it by the Ukrainian society and the formation of a vote of confidence in the law enforcement system. A clear marker of the real compliance of police activities in Ukraine with these standards is the public support of law enforcement, which is provided in the case of achieving publicity, apolitical, decentralized and decorrupted. The European Code of Police Ethics, adopted on September 19, 2001, states that the main objectives of the police are: to maintain public order, ensure law and order in society; protection and observance of fundamental rights and freedoms of the individual, enshrined, in particular, in the European Convention on Human Rights; crime prevention and control; detection of crimes; providing assistance and services to society.

Some of these standards are partially reflected in the Law of Ukraine «On the National Police», but the main problem of their implementation is the lack of comprehensive implementation of such standards. For example, Article 10 of the Law of Ukraine «On the National Police» defines the principle of political neutrality of law enforcement, this standard is fully consistent with European practice of organizing police work. At the same time, there are a number of legal provisions that prevent the implementation of the principle of depoliticization of the National Police.

In particular, Part 2 of Art. 21 of the Law of Ukraine «On the National Police» stipulates that the head of the National Police is appointed by the Cabinet of Ministers of Ukraine on the proposal of the Prime Minister of Ukraine in accordance with the proposals of the Minister of Internal Affairs of Ukraine (About the national police). The Ministry of Internal Affairs controls the activities of territorial bodies, institutions, establishments and enterprises belonging to the sphere of management (Of the regulation on the ministry of internal affairs); the Chief of Police reports to the Minister of Internal Affairs of Ukraine on the implementation of the tasks and powers assigned to the police (paragraph 5, part 1 of Article 22 of the Law of Ukraine «On the National Police») (About the national police); Territorial police bodies are formed, liquidated and reorganized by the Cabinet of Ministers of Ukraine on the proposal of the Minister of Internal Affairs of Ukraine on the basis of proposals of the Chief of Police. The structure of territorial

police bodies is approved by the head of the police in agreement with the Minister of Internal Affairs of Ukraine (parts 2, 3 of Article 15 of the Law of Ukraine «On the National Police») (About the national police).

All these powers of the Ministry of Internal Affairs confirm the de facto existence of the Ministry's legal powers to organize the activities of the National Police and control its implementation. At the same time, the Ministry of Internal Affairs is part of the Cabinet of Ministers of Ukraine, whose portfolios are distributed among representatives of various political forces on a quota basis, which gives grounds for concluding that it is impossible to avoid political influence on the National Police. Thus, the Law of Ukraine «On the National Police» needs to revise and amend a number of its provisions in order to harmonize them with European standards.

We come to the conclusion that it is necessary to revise and change a number of legal provisions of the Law of Ukraine «On the National Police» in order to avoid political influence on this structure. Thus, in order to accelerate the process of implementation of international standards in the Ukrainian legal field, it is necessary to carry out not superficial, but deep and meaningful reforms, which would be based on a clear legal basis. Therefore, the urgent task today is to bring all acts in line with European principles of policing and education of such a new generation of employees.

Conclusions

The study of the legal status of law enforcement agencies of foreign countries gives grounds to state that the principles of organization, functions, powers of law enforcement agencies of foreign countries do not actually depend on the forms of government and territorial organization. And this is for the reasons that the unity of tasks that are constitutionally assigned to law enforcement agencies, in particular, ensuring the realization of public interests of the state and society in the field of the rule of law is inherent in the entire law enforcement system.

Given the large number of law enforcement agencies in Ukraine, it is advisable to adopt the Polish experience, including them in the police, without giving paramilitary features. This approach will greatly simplify the understanding of their essence and optimize the constitutional and legal regulation of their activities.

The common features of the police structures in the countries of the Romano-Germanic legal family were revealed, namely: the diversity of police systems and the presence of police bodies in different ministries and departments. The dominant type of police department in the law enforcement system of democratic countries is the model of «service to

society», which is based on the paradigm of social partnership. The police officer should no longer play a repressive and autocratic role, but perform a positive, supportive function.

In order to avoid legal conflicts, gaps in laws and bylaws, it is emphasized that any changes in the structure of the Ministry of Internal Affairs of Ukraine should be accompanied by appropriate changes in legal documents, not limited to the Law of Ukraine «On National Police».

The expediency of amending the Regulation on the National Police, approved by the Resolution of the Cabinet of Ministers of Ukraine of October 28, 2015 № 878, substantiating the main tasks of providing police services in the areas of: protection of human rights and freedoms, as well as the interests of society and the state; ensuring public safety and order; crime prevention; providing, within the limits established by law, services to assist persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance ".

In order to legally regulate the concept and content of police services, arguments are given to remove the term «police services» from the Law of Ukraine «On the National Police» and related legislation, limiting the general indication that the National Police provides, within the law, including services, the content, list and procedure for which are determined by law.

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Activities of Law Enforcement Agencies in the Context of the Introduction of Innovative Technologies (Comparative Legal Aspect)

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Abstract

The objective of the study was to determine the legal mechanisms for the use of innovative technologies in law enforcement and to outline the main problems of their implementation in the fight against crime. The methodological scheme of the article was the use of theoretical and empirical research methods, as well as comparative, structural and logical methods, documentary, and systems analysis. It is established that the main types of modern technologies used in law enforcement are unmanned aerial vehicles, artificial intelligence, robotics, biotechnology, analytical and geographic information systems, explosion locators and chatbots. The problems of introducing innovative technologies into law enforcement were found to be objective and subjective. The ways of overcoming them are offered through the creation of legal mechanisms for the legal use of various modern technologies by law enforcement agents. It is concluded that effective mechanisms for the use of innovations in law enforcement will increase the effectiveness of crime prevention and enable law enforcement officials to avoid conflicts related to violations of citizens' rights and the protection of national security.

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Keywords: innovative technologies; law enforcement; implementation and innovations; modern technologies; postmodern legislation.

Actividades de los organismos encargados de hacer cumplir la ley en el contexto de la introducción de tecnologías innovadoras (aspecto jurídico comparado)

Resumen

El objetivo del estudio fue determinar los mecanismos legales para el uso de tecnologías innovadoras en la aplicación de la ley y esbozar los principales problemas de su implementación en la lucha contra la delincuencia. El esquema metodológico del artículo fue el uso de métodos de investigación teóricos y empíricos, así como métodos comparativos, estructurales y lógicos, documentales y análisis de sistemas. Se establece que los principales tipos de tecnologías modernas utilizadas en la aplicación de la ley son: vehículos aéreos no tripulados, inteligencia artificial, robótica, biotecnología, sistemas de información analítica y de información geográfica, localizadores de explosiones y chatbots. Se encontró que los problemas de introducir tecnologías innovadoras en la aplicación de la ley son objetivos y subjetivos. Se ofrecen las formas de su superación mediante la creación de mecanismos legales para el uso legal de diversas tecnologías modernas por parte de los agentes del orden. Se concluye que los mecanismos eficaces para el uso de las innovaciones en materia de aplicación de la ley aumentarán la eficacia de la prevención del delito y permitirán a los agentes del orden evitar conflictos relacionados con las violaciones de los derechos de los ciudadanos y la protección de la seguridad nacional.

Palabras clave: tecnologías innovadoras; aplicación de la ley; implementación e innovaciones; tecnologías modernas; legislación posmoderna.

Introduction

Current trends of globalisation intensify international competition in the field of innovative technologies. The state of innovation development is the main competitive advantage of the country and determines its level of competitiveness in the international arena. Only the United States, the United Kingdom, Germany, France, and Singapore have achieved significant economic success through the transfer of innovative technologies

so far. Such realities of globalisation of modern technologies have caused a technological gap between the most developed and underdeveloped countries.

According to the report of the Global Innovation Index 2021 published on September 21, 2021, by the World Intellectual Property Organization, Switzerland, Sweden, USA and England are still the leaders of the innovation rating for the last three years (World intellectual property organization, 2021). Korea has joined the top five for the first time. The geography of global innovation, as the World Intellectual Property Organization noted, is changing unevenly. A striking example is the dynamic innovation development of the region of Southeast Asia, East Asia and Oceania over the last decade, which is increasingly closing the gap with the unchanging leaders of North America and Europe. As a result, five countries from the region have entered the top 15 economies this year: Korea (5), Singapore (8), China (12), Japan (13) and Hong Kong, China (14).

At the international level, developing countries find it extremely difficult to compete with their innovation potential with middle-income countries, which manage to catch up with more developed countries in terms of innovation. However, such countries successfully increase their innovation potential through international technology transfer, development of technologically dynamic services that are in great demand in the international market, which generally leads to a balance of innovation systems in the world.

Technological criminogenic risks of crime are becoming increasingly important every year. According to the 14th UN Congress on Crime Prevention and Criminal Justice, there were several technological criminogenic risks in 2020, namely:

- cryptocurrencies that have a high degree of anonymity of use, which leads to unhindered terrorist financing and money laundering.
- drug market created through DarkNet.
- illicit trafficking in weapons and explosives through the cryptocurrency market and DarkNet.
- human trafficking through the use of modern communication channels to find victims and potential buyers of live goods.
- abuse and exploitation of children because of their uncontrolled access to information technology.
- illegal movement of migrants due to the offenders' use of technology to study the routes of the border service (United Nations, 2018).

The Budapest Concept on Cybercrime was adopted to stop actions against the integrity and accessibility of computer systems, networks and computer data, as well as the abuse of such systems (Council of Europe, 2001). The provisions of the Concept ensure an appropriate balance between the interests of law enforcement agencies and respect for fundamental human rights enshrined in international treaties. They include the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the UN International Covenant on Civil and Political Rights of 1966, the Council of Europe Convention for the Protection of Individuals about Automatic Processing of Personal Data of 1981, the UN Convention on the Rights of the Child of 1989, the ILO Worst Forms of Child Labour Convention of 1999, and the Council of Europe Conventions on Co-operation in Criminal Matters.

Thirty-five participating countries have committed themselves to a coherent policy to combat high-tech crime, as well as to create an appropriate law enforcement agency to prevent cybercrime and provide it with modern technical means to carry out its activities (Council of Europe, 2001).

However, the current level of innovative awareness of criminals and their access to modern technologies far exceeds the capabilities of law enforcement agencies. Therefore, increasing the effectiveness of law enforcement agencies in preventing high-tech criminal acts requires a wide implementation of modern developments in their activities, which will hinder offenders to violate the rights of citizens and help to protect the interests of national security.

Kolodyazhny (2020) studied innovative technologies through the prism of law enforcement activities, the prism of modern challenges of criminal law. Shevchuk (2020) the forensic scientist, examined the content and concept of forensic innovations. Matusiak and King (2020) developed the classification of modern policing technology. Hollywood *et al.* (2019) revealed modern challenges and legal background for the application of innovations in law enforcement. Shubenkova and Egorov (2020) analysed legal and technical forms of development of the digital law and order.

Simran and Nikhil (2020) outlined the place and role of innovation in cybercrime from the perspective of globalization. Soldatova (2013) studied technological measures to prevent cybercrime.

Many scientific works deal with the introduction of modern technologies in law enforcement activities and their legal enshrinement. Losavio *et al.* (2018) explored the technical means of digitalising the evidence base in forensics. Pramanik *et al.* (2017) analysed the intellectual bases for criminal investigations. Mastrobuoni (2020) studied forensic information technology. Matlala (2019) researched electronic and intelligent policing systems. Cracknell (2017) studied unmanned aerial vehicles (drones).

Nemitz (2018), Cath (2018), and Pagallo (2018) reviewed artificial intelligence systems and their general capabilities. Lum *et al.* (2017) analysed technologies and the resultant performance in law enforcement. Hendrix *et al.* (2019) considered geographic information systems.

Therefore, the aim of this study is to determine the features of the use of innovative technologies in combating crime and outline the main problems of their implementation in law enforcement.

The aim of the study involved the following objectives:

- find out the innovation policy of the leading countries and the possibility of using special technologies in the activities of law enforcement agencies.
- identify the main problems of introduction of innovative technologies in law enforcement agencies and suggest ways to solve them.

1. Methods and materials

The validity and reliability of the obtained results was ensured by the use of a set of general scientific (empirical and theoretical) and special methods (comparative, structural-logical, documentary and system analysis) of scientific knowledge.

Empirical knowledge provides the background for the theoretical method. Drawing certain theoretical conclusions first requires collecting information, which is empirical. Based on the relevant data that are empirical in nature, we processed them analytically and presented arranged results in the form of a certain theory.

Observation and comparison were used in the article as a kind of empirical research method. An empirical theoretical method was also used, analysis and synthesis, as well as a logical approach. A partial method is also applied, which refers to the theoretical methods of research, and consists in the definition, description, and interpretation.

The main materials, international, regional, and national legal acts, such as the Budapest Convention on Cybercrime, the International Code of Conduct on the Transfer of Technology, the Lisbon Strategy; plans, strategies and programs Europe 2020, Europe 2030, Horizon 2020; national legislation of European countries and the United States in the field of innovation and modern technologies. The information and empirical background of the study was statistics of the World Intellectual Property Organization, generalization of practical application of national legislation in the fields of scientific and technological, innovation activities and intellectual property, practical activities of law enforcement agencies, reference books, publications in periodicals.

2. Results

The use of modern technologies in law enforcement agencies in the member countries of the Organization for Economic Cooperation and Development is regulated by law in the field of law enforcement and in the field of development, creation, use of innovations, technology transfer and intellectual property.

In order to ensure innovation, the development of high-tech industries and the implementation of scientific and technical developments in the United States, laws were passed governing the financing of special programmes and the use of market mechanisms for innovation in the country, namely:

- National Science and Technology Policy, Organization and Priorities Act of 1976, which determines the general provisions of national policy in the field of nanotechnology (Congress. gov., 2010).
- The Stevenson-Wydler Technology Innovation Act of 1980, which enshrines a basic approach to the place of technology and industrial innovation in the US economy (Congress. gov., 2000).
- The Bayh-Dole Act or the Patent and Trademark Law Amendments Act, concerning the protection of intellectual property rights, which is the result of research funded by the federal government. This law gives the right to universities, small businesses, and non-profit organizations to patent their results of inventive activity and commercialise them (Govtrack, 2008).
- The Small Business Innovation Development Act of 1982, which introduces a rule that requires federal agencies to allocate certain funds for research (Congress. gov., 2006).
- The National Innovation Act (2005).
- The National Competitiveness Investment Act (2006).

To ensure the effective functioning of scientific and technological, innovative, and intellectual activities, the US government establishes a number of government scientific and technological programmes (Small Business Innovation Research Programme (SBIR), Small Business Technology Transfer Programme (STTR), US Innovation Partnership Initiative).

As in the United States, the EU is creating legal mechanisms to build an innovative environment that establishes a differentiated system of tax benefits and provides soft loans. In shaping the national innovation policy of the EU, the determinants are the rules of the EU common policy related to macroeconomic regulation, norms of economic, social, and regional

development, as well as measures to support science, technology and innovation through research framework programmes that establish basic conditions for innovation.

Regulatory and legal support of innovation in the European Union consists of regional strategies, framework programmes and national specialised legislation of its member countries (Table 1). To stimulate innovation, the EU approves strategies every decade: the Lisbon Strategy (2000-2010) (European Parliament, 2010), Europe 2020 (2010-2020) (European Commission, 2019a), Europe 2030 (2020-2030) (European Commission, 2019b), which include areas of innovation for the needs of public protection and law enforcement. In order to fulfil the objectives of Europe 2020, a new framework programme for scientific and innovative research — Horizon 2020 — was adopted (European Commission, 2020a).

One of its priorities is social challenges, which focuses on research and innovation programmes for law enforcement, in particular: Justice Programme and Hercule III. Table 1 presents the innovation policy of some EU countries.

Table 1. Innovation policy of foreign countries

Country	Regulatory support	Institutional structure	Funding
Austria	Laws "On the Promotion of Scientific Development" (1967); "On Universities" (2002)	National Council for Research and Technology Development; National Fund for Research, Technology and Development, Innovation Funds	2.5 % GDP
Belgium		Government of Belgium, Scientific and Technological Research & Development Program, EUREKA	1.9 % GDP
Denmark	Laws "On Technology and Innovation" (2002), "On Inventions in Public Research Institutions" (1999), "On Technology Transfer in Public Research Institutions" (2004), National Programme for Innovation Development, National Development Strategy in the Globalization	Government of Denmark, Ministry of Science, Technology and Innovation, Danish Agency for Science, Technology and Innovation, Supervisory Boards, Technology Service Institutes	

Spain	Law on Science (1986), National Plan and Programmes	Ministry of Science and Innovation, General Council for Science and Technology, Interministerial Commission for Science and Technology, National Plan	1.2 GDP
Italy	Law No. 42/82 on the Promotion of Industries of National Importance (1982)	Ministry of Economic Development of Italy, Foundation for Technological Innovation, innovation structures, technology parks or science and technology parks	
Germany	The High-tech Strategy	Ministry of Education and Research, Ministry of Economy and Technology, Expert Commission on Research and Innovation	2.5 % GDP
Finland	National Innovation Strategy	Ministry of Education, Ministry of Labour and Economy, Research and Innovation Council, Foundations	3.5 GDP
Switzerland	Federal Law "On Measures to Overcome the Crisis and Increase Jobs" (1954), Resolution of the Federal Council "On Encouraging the Development of Technology and Innovation" (1982)	State Secretariat for Professional Education and Technology, Federal Department of Economics	
Sweden	Law "On Development of Research and Innovation"	Ministry of Employment and Communications, Ministry of Education and Culture, Swedish Innovation Systems Development Agency, National, regional, sectoral programmes	3.7 GDP

Source: author's development based on (Verkhovna Rada of Ukraine, 2018).

Continuing our research, we classify the types of innovative technologies implemented in the activities of law enforcement agencies (Figure 1).

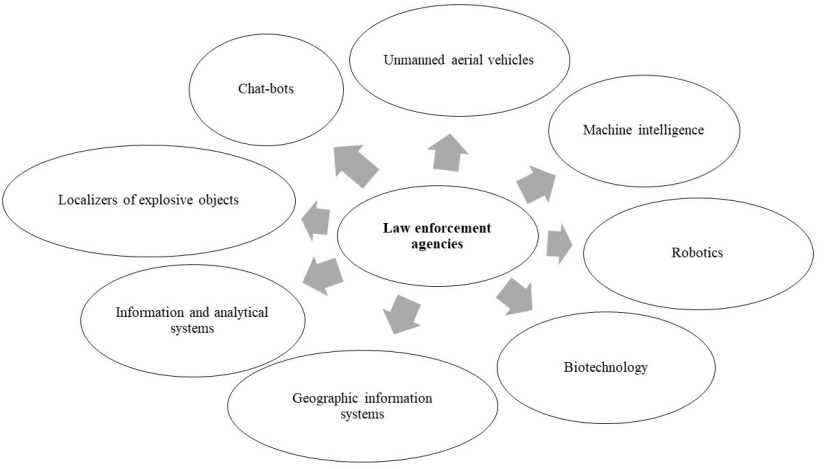

Figure 1. Types of innovative technologies implemented in the activities of law enforcement agencies

Source: author's development based on (Kolodyazhny, 2020: 178; Matusiak and King, 2020).

Unmanned aerial vehicles (hereinafter — UAVs) (including drones, quadcopters) are widely used in law enforcement. They allow law enforcement officers to perform the following official duties: patrolling and surveillance of large areas; search and detection of people using a thermal imager; control over the observance of order at mass events; monitoring of the traffic situation and analysis of the places of traffic accidents; coordination of actions of law enforcement officers from air.

Despite the fact that the EU is a leader in the production and use of UAVs, the EU has not adopted clear legal provisions establishing the rules of UAV flight. A resolution adopted by the European Parliament in 2015, which sets out general provisions on security and privacy when taking photos and videos through UAVs, as well as mandatory equipment of drones with chips with pilot registration data can be considered the only regulatory document adopted in the EU on the use of UAVs.

As the EU, many countries do not have uniform standards for the use of quadcopters and drones (Table 2).

Table 2. Terms of use of UAVs in different countries

Mandatory conditions for the use of UAVs	Countries
UAV flight rules are established by the relevant civil aviation service or agency	United States, Singapore, United Kingdom, Canada, Africa, Vietnam, Philippines, Indonesia, Malaysia, Australia
UAV registration required	USA, Russia
Restrictions on UAV weight and range	USA, Singapore, United Kingdom, Ireland, Canada, Africa, Australia
Prohibition of shooting in large crowds	Australia, Italy
Only an adult can be the owner of a UAV	Africa

Source: own elaboration.

Artificial intelligence in the activities of law enforcement officers allows to solve more complex economic and social problems, but its use in official activities requires the adoption of modern legislation in line with the realities of globalisation and the competence of law enforcement officers. The EU was one of the first international organizations to approve the Resolution on a Civil Liability Regime for Artificial Intelligence (2020/2014 (INL)) (European Parliament, 2020) and the White Paper on Artificial Intelligence (European Commission, 2020b: 10-19).

Paragraph 5 of the White Paper gave law enforcement agencies the right to use appropriate artificial intelligence tools to ensure the safety of citizens, with due respect for their rights and freedoms. However, the use of artificial intelligence by law enforcement officers is limited, it should not violate the right to personal data protection in the framework of criminal proceedings. Restrictions are provided for in paragraph 7 of the White Paper and Directive (EU) 2016/680 of the European Parliament and of the Council of Europe of 27 April 2016 on the protection of individuals with regard to the processing of personal data by the competent authorities for the prevention, investigation, detection or free movement of such data.

The current legal framework for the use of robotics in the field of crime prevention includes only the rules for the development of robotics. This is Resolution 2015/2103 (INL) of the European Parliament of 16 February 2017 on the civil law regulation of robotics with recommendations for the European Commission, which sets out general provisions for robotics and the Multi-Annual Roadmap of Robotics 2020 for Horizon 2020 (European Commission, 2020a). The provisions for the development of robotics were adopted at the legislative level only in Asian countries: the Law on the Development and Distribution of Intelligent Robots (South Korea), Japan's

New Robot Strategy, Master Plan for Robotics (South Korea), China's State Development Programme, Robotics Industry Development Plan (China).

In the military sphere, the use of military robots is limited by the decision of the UN meeting in 2013, which recommended that Member States impose a national moratorium on military robots and ensure compliance with international humanitarian law in all activities related to robotic weapons systems. Besides, military robots are equated with inhumane weapons, the creation and use of which is prohibited by the Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or Have Indiscriminate Effects.

The use of modern biotechnology in reducing the potential for crime is limited by international law: European Parliament Resolution No. 327/88 on the Ethical and Legal Issues of Genetic Experiments; The Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, the Convention on Human Rights and Biomedicine and the Universal Declaration on the Human Genome and Human Rights.

The use of information-analytical and geographical information systems and chatbots in the fight against crime is based on information law. Using these modern information technologies, law enforcement officers undertake to comply with the rules on the protection of personal data of individuals in the automated processing of data provided for in Convention No. 108 of the Council of Europe and Directives 95/46/EC and 97/66/EC. They should also comply with the Convention of the International Telecommunication Union, which establishes common standards and rules in the field of telecommunications.

The use of locators of explosive devices by law enforcement officers is based on compliance with the requirements of the International Mine Action Standards, which establish common criteria for aspects of the humanitarian demining. The provisions of the Ottawa Convention, which obliges the destruction of stockpiles of antipersonnel mines and imposes a moratorium on their accumulation, production and transfer should also be complied with. It is also required to comply with international norms on counter-terrorism — the International Convention for the Suppression of Terrorist Bombing, the Declaration on Measures to Eliminate International Terrorism, the Convention on the Marking of Plastic Explosives for Detection, and the European Convention on the Suppression of Terrorism.

However, the introduction of such innovations in the fight against crime is extremely important, as it is associated with the applied function of law enforcement, moreover many modern technologies have not been implemented in practice. The reasons were different, both objective and subjective (Figure 2).

Subjective reasons for ignoring the introduction of innovative technologies in the activities of law enforcement agencies are related to the lack of interest of individual entities in innovation and, accordingly, in the acquisition of special knowledge for their application. Objective reasons are related to the unjustified refusal to apply new scientific and technical knowledge and research methods.

To overcome them, it is considered appropriate to create legal mechanisms for the lawful use by law enforcement officers of various modern technologies necessary for the performance of official duties, as well as to conduct educational activities with law enforcement officers regarding the latest technical developments and resultant performance indicators.

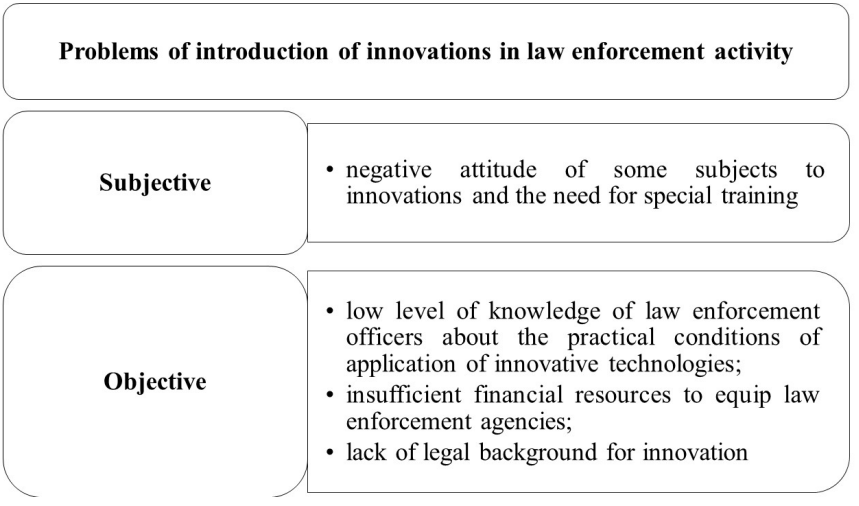

Figure 2. Reasons for ignoring the introduction of innovative technologies in the activities of law enforcement agencies

Source: author's development based on (Shevchuk, 2020: 151-152).

4. Discussion

Improving the effectiveness of law enforcement activities to prevent high-tech crimes requires the widespread introduction of modern developments in their activities, which will hinder crime to violate the rights of citizens and protect the interests of national security. The main types of modern technologies used in law enforcement include unmanned aerial vehicles, artificial intelligence, robotics, modern biotechnology, information-analytical and geographic information systems, localizers of

explosive devices; chatbots. This list is not exhaustive, it may change with the development of scientific and technological progress and the challenges of globalization.

The introduction of such law enforcement innovative technologies is based on the provisions of international treaties (Conventions, Directives, EU Resolutions) and the norms of national specialized legislation in the fields of scientific and technical activities, innovative development, and intellectual property. Their combination in each country determines the level of the legal mechanism for the application of innovations in law enforcement agencies.

Problems of introduction of modern innovative technologies in law enforcement activity relate to imperfection of the legislation concerning their use, insufficient financing of law enforcement agencies and low level of knowledge of law enforcement officers about innovations. According to Mastrobuoni (2020) and Hendrix *et al.* (2019), the need for introducing innovative technologies in criminology is due to the progressiveness of criminals compared to law enforcement officers in terms of the ability and scope of application of modern technology to commit various criminal offenses. After all, the traditional methods of policing, as Matlala (2019) noted, will not reduce crime by themselves. The use of innovative technologies, in particular information-analytical systems, as Akhmetov *et al.* (2018) noted, has a different meaning at each stage of criminal proceedings.

Shubenkova and Egorov (2020) emphasize that modern law-making and law enforcement agencies cannot effectively perform their functions without the adoption of legislative regulators aimed at regulating public relations in the digital environment. Wei-Jung (2020) emphasizes that the use of modern technologies by law enforcement officers without their proper jurisdiction is impossible. Pagallo (2018) criticizes the European policy on the ambiguity of determining the legal status of robotics, which leads to different interpretations in economic, civil, and criminal law relations.

According to Cracknell (2017), uneven legal application of innovative technologies in different countries, in particular UAVs, depends on the purpose of their use: commercial activities, official duties, research, environmental monitoring, crime detection. Hollywood *et al.* (2019) believe that law enforcement innovation can be addressed through the concerted collective efforts of the entire criminal justice community, including stakeholders from local communities, social services and providers.

According to Rosser *et al.* (2017), efficiency of use of information-analytical systems is possible only through the creation of norms which will clearly define the legal status of information technologies. The process of digitization of documents and regulation of data exchange processes

using electronic law enforcement systems, the procedure for access to information, the administration of justice using the capabilities of artificial intelligence require legislative regulation (Rosser *et al*., 2017: 569-572). According to Losavio *et al*. (2018), failure to resolve legal conflicts in the mechanisms of using modern information technology in the future will lead to conflicts related to police powers and guaranteed rights of citizens. The scale of conflicts will depend on the laws in each country (Losavio *et al*., 2018).

Nemitz (2018) believes that the introduction of law enforcement innovations, in particular artificial intelligence requires adhering to the rule of law, human rights and democratic principles. Supporting the position of the scientist, Cath (2018) recommends to follow clear instructions when using them in order to avoid personal conflicts. Benton and Newhall (2016) argue that the use of robotics is possible only through the introduction of effective legal mechanisms for their operation.

Lum *et al*. (2017) divide the problems of introduction of modern technologies in policing into technological and organisational, which are revealed through traditional approaches to their official duties. Pramanik *et al*. (2017) considers methodological imperfection of research to be the main problem of innovation in law enforcement.

The legal scholars view the issue of effective measures to combat cybercrime and training of future law enforcement officers as another important aspect in the implementation of innovations in law enforcement. According to Soldatova (2013), high latency, lack of official statistics and comprehensive research on cybercrime lead to the ineffectiveness of preventive measures, causing difficulties in combating this type of crime. Simran and Nikhil (2020) also believe that raising the level of knowledge of modern technologies of law enforcement officers will increase the security of cyberspace.

As Soldatova (2013) noted, the low level of legal consciousness of technical specialists in universities may lead in the future to committing crimes by students in the field of computer technology. Therefore, she proposes to carry out preventive work with such students and teach not only the introductory part of the basics of law, but also to provide in-depth legal knowledge on cybercrime.

The implementation of innovations in the law enforcement largely depends on the human factor, from ordinary employees to their managers. Shevchuk (2020) proposes to single out such a task of criminology as scientific support of introduction of innovative products, methods, techniques and means developed by forensic science into practice.

According to most scientists, the problems of introducing innovative technologies into law enforcement agencies are often associated with

methodological gaps that prevent the understanding and distinction between innovations and modern technologies. Innovation for law enforcement officers is something new, which, although in demand in practice, has not unfortunately found its effective practical application. As a result of the doctrinal analysis of these problems, we can note that scientists consider it reasonable to further research innovative technologies for law enforcement agencies, providing effective recommendations for their practical implementation, which would adjust the content and direction of innovative development of law enforcement.

Conclusion

Legal systems of innovation in different countries of the world provide an opportunity to develop their innovation policy in the conditions provided by each country. As a result, the creation of innovations in each country may differ from each other by different characteristics and have different conditions of legal and practical use. And this significantly affects the innovation of law enforcement agencies in different countries. After all, the uniform introduction of modern technologies in law enforcement in each country of the world would help to counter high-tech criminal manifestations in the world.

Innovative technologies for law enforcement agencies are the latest or improved technologies that significantly improve the efficiency of law enforcement agencies in the performance of their duties. Objective problems of introduction of innovations in law enforcement are a low level of knowledge of law enforcement officers about innovations; legal conflicts of mechanisms of their law enforcement by law enforcement officers; insufficient funding of law enforcement agencies. Subjective reasons include ignoring innovations by the management and ordinary personnel, and the need for special training.

The prospect of further research is to develop ways to implement modern developments in law enforcement agencies and create effective mechanisms for their implementation in the fight against crime. Therefore, we see further prospects in the empirical study, as well as theoretical and methodological justification of the effectiveness of law enforcement agencies through the use of innovations and legal support for the practical application of modern legal technologies.

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Social Networks as a Means of Combating Gender-Based Violence

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Abstract

Cyberbullying of women and girls is not just a violation of human rights, it is a global phenomenon that is destroying the lives of women and their families around the world. Using a hermeneutic documentary methodology, the objective of the study was to determine the legal mechanisms for the use of social networks as a means of combating gender violence and thus outline the main problems of their application of the law. Everything indicates that social networks, as an effective means of forming positive public opinions, can form a positive image of women and the appropriate attitude of men towards them, and as well as contribute to combating violence on the Internet. The system for combating gender-based violence consists of prevention, protection, criminal responsibility, and a comprehensive gender policy. It concludes that international gender policy standards have been found to be based on a model of «real equality», which is ensured through the achievement of equal opportunities, equal access to opportunities and equal performance.

Keywords: cyberbullying; gender-based violence; gender equality; social networks; women.

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Las Redes Sociales como Medio para Combatir la Violencia de Género

Resumen

El acoso cibernético de mujeres y niñas no es solo una violación de los derechos humanos, es un fenómeno global que está destruyendo la vida de las mujeres y sus familias en todo el mundo. Mediante una metodología documental de tipo hermenéutica, el objetivo del estudio fue determinar los mecanismos legales para el uso de las redes sociales como medio de lucha contra la violencia de género y esbozar así los principales problemas de su aplicación de la ley. Todo indica que las redes sociales, como medio eficaz para formar opiniones públicas positivas, puedan formar una imagen positiva de las mujeres y la actitud adecuada de los hombres hacia ellas, y así como contribuir a combatir la violencia en Internet. El sistema de lucha contra la violencia de género consiste en la prevención, la protección, la responsabilidad penal y una política integral de género. Se concluye que se ha comprobado que las normas internacionales de política de género se basan en un modelo de «igualdad real», que se garantiza mediante el logro de la igualdad de oportunidades, la igualdad de acceso a las oportunidades y la igualdad de resultados.

Palabras clave: ciberacoso; violencia de género; igualdad de género; redes sociales; mujeres.

Introduction

According to the United Nations Telecommunication Union, the number of Internet users is growing by an average of 10% each year. The Internet is most used in the EU, at around 87%, with the lowest rate of 19% in Africa. There is a gender gap between Internet users worldwide: 58% are men and 48% are women (International Telecommunication Union, n. d.). The spread of the Internet, the rapid popularity of mobile information and communication technologies and the relevance of social networks opens up new opportunities for cyberbullying, the most common victims of which are women and girls. Violence against women and girls is a complex and global phenomenon that knows no social, economic or national boundaries. It is a serious violation of human rights, which goes unpunished in many cases.

Over the past seventy years, the United Nations and the Council of Europe have adopted a number of international instruments to combat violence against women. These are the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Council of Europe Convention on the

Prevention of Violence against Women and Domestic Violence. However, the established international legal mechanism is not always adhered to by countries, and services for victims remain limited or underfunded. At the same time, the norms of national legislation and the available support for victims of violence vary greatly in each country of the world.

The research is topical because gender-based violence committed through social networks, which have now flooded all spheres of human life and become an integral part of it, is a global problem with serious consequences for society and the economy around the world. Cyberbullying of women and girls is not only a violation of human rights, but also a life-destroying issue for women and their families around the world.

Therefore, the aim of this article is to define the principles of gender equality through the prism of international standards and means of combating gender-based violence committed using information and communication tools.

The aim involved the following research objectives:

- determine and describe the principles of protection of gender equality and the system of counteraction to gender-based violence.
- identify the main problems of using social networks in combating cyberbullying and suggest ways to solve them.

1. Literature Review

Many scientific papers have addressed some of the issues related to gender-based violence committed on the Internet and the means of combating cyberbullying. Yao *et al.* (2021) analysed the impact of time and trust on the spread of false rumours on social networks. Levak (2020) revealed the reasons for the spread of misinformation on the Internet through the prism of European concepts of combating them. Tripathy *et al.* (2010; 2013) analysed the effectiveness of the use of technical and information tools to combat false rumours in social networks. Soares and Sousa (2020) revealed the place and role of digital communications in changing the behaviour of the population and established a direct dependence of human behaviour on the influence of information flow through communication technologies. Gupta *et al.* (2018) identified the effectiveness of the use of social networks as a police tool to combat gender-based cyberbullying.

Van Laer (2014) analysed cyberbullying in the social media and identified the main preconditions for committing gender-based violence on the Internet. Sarkar and Rajan (2021) considered harassment of women on the Internet and recognized this phenomenon as a component of

cyberbullying. Zych *et al.* (2021) also studied cyber-aggression in social networks and recognized it as a component of cyberbullying. Henry *et al.* (2020) studied the phenomenon of domestic and sexual violence against adult women using digital communication technologies. Their research identified the problems of cyberbullying related to the abuse of access to digital content, cyberbullying by an intimate partner, sexual harassment on the Internet using technology and images.

Chan *et al.* (2021) studied cyberbullying on social networks and identified the preconditions for its commission against minors. Marín-Cortés and Linne (2020) considered the classification of cyberbullying among young people, where they included: data theft, online defamation, digital information theft, cyberbullying, sexual harassment, and revenge. Salih *et al.* (2019) studied the factors of cyberterrorism, as well as means of counteraction, and found that the precondition for the cyberterrorism is the inconsistency of criminal, constitutional, private, and civil law.

Analysing the support centres for victims of cyberbullying, Zou *et al.* (2021) and MacLure and Jones (2021) recognize the effectiveness of the computer security support service in helping victims who have experienced violence from an intimate partner. Fiolet *et al.* (2021), Rocha-Silva *et al.* (2021) Yardley (2021) considered the causes of domestic and intimate violence committed through information technology and determined that the anonymity generated by electronic communication technologies contributes to the cruelty of domestic violence.

The victimization of gender-based violence on social media was analysed by Caridade *et al.* (2019) through the prism of cyber dating abuse among minors in the United States; Mahoney *et al.* (2021) and Mikkola *et al.* (2020), which they associate with the dependence of daily use of digital technologies, relationship disorders and jealousy. Gender abuse in digital relationships among young people was studied by Brown *et al.* (2021), who identified a gender difference in cyberbullying committed by men and women. The activities of feminist organizations in the fight against online gender-based violence were considered. Kurasawa *et al.* (2021) found that feminist ideology contributes to the establishment of cultural and social values among young people.

Despite a rather wide range of research on this issue, the means of combating gender-based violence on social networks, as well as the causes of gender-based violence on social networks and ways to overcome them are poorly studied, which determines the research topicality.

2. Methods and Materials

The research of the chosen topic was carried out in three stages. At the first initial stage, the research topic was formulated by reviewing the current state of the problem of cyberbullying against women. Besides, the aim and objectives of the study were set based on the analysis of the scientific legal literature, legal framework on gender equality and the works of scientists on combating gender-based violence by comparing and criticizing problem information, generalization, and coverage of the issue.

The second stage involved the scientific research itself conducted through the fulfilment of the research objectives set at the beginning. The study of the topic was carried out through theoretical and experimental research. Theoretical research allowed determining the content of gender equality through the prism of international law, the principles of gender equality and the system of means to combat cyberbullying revealed through the prism of their practical application. An experimental study based on UN statistics and the Broadband Commission for Digital Development, the case law of the European Court of Human Rights, generalizing the practical application of international law in the field of gender equality helped identify models of gender equality and combating gender-based violence.

The third stage provided for the analysis and presentation of the results of scientific research. The general analysis of theoretical and experimental research, comparison of their results, and the analysis of differences identified the main problems of using social networks as an effective means of combating gender-based violence on the Internet.

The research of the chosen topic was carried out using empirical and theoretical methods of scientific knowledge. From the perspective of external relations (regulatory and legal support, legal relations), empirical knowledge reflects the object of study (gender-based violence committed through social networks). Using the methods of analysis and a logical approach, we consider scientific, legal, and practical information on gender equality and violence, and reveal the content of cyberbullying against women and girls, its causes, principles and means of counteraction. Theoretical knowledge of cyberbullying reflects this subject of research from the perspective of universal internal, essential connections and regularities which are covered by rational processing of empirical data. The combination of these two methods of scientific knowledge generates an empirical interpretation of the theory and theoretical interpretation of empirical data, as well as provides a comprehensive coverage of cyberbullying against women and means of counteracting it.

The sample included the following objects of the research: the legal nature of gender equality, its principles, as well as the preconditions for the cyberbullying against women and girls, as well as the means of counteracting

it. The combination of these objects helped to reveal the content of the problem of using social networks as a means of combating gender-based violence. The research was carried out on the basis of information retrieval using a computer, the global computer network — Internet — and scientometric databases.

The main materials for the study are international legal acts: the Universal Declaration of Human Rights, the UN Charter and the Statute of the International Court of Justice, the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Council of Europe Convention on Prevention of Violence against Women and Domestic Violence.

3. Results

The Universal Declaration of Human Rights (United Nations, 1948) establishes the principle of non-discrimination and proclaims that: all human beings are born free and equal in dignity and rights (Article 1); everyone is entitled to all the rights and freedoms proclaimed in it, without distinction of any kind, including sex (Articles 2, 5); everyone has the right to equal protection against any discrimination and against any incitement to such discrimination (art. 7). In addition, the Declaration sets out anti-violence rules. Article 5 stipulates that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

The principle of equality between men and women and non-discrimination is enshrined in both the UN Charter and the Statute of the International Court of Justice. Its preamble contains a call: "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" (United Nations, 1945: n/p).

The main provisions of modern policies to promote gender equality in the world are set out in the United Nations Convention on the Elimination of All Forms of Discrimination against Women (United Nations, 1979). The main theme of the Convention reflected in the preamble and articles is the formulation of calls for practical action by States to eliminate discrimination against women. They are provided in the first sixteen articles, while the remaining twelve provide reporting requirements and administrative mechanisms for implementing the provisions of the Convention. At the international level, this international document emphasizes the responsibility of governments for discrimination against women, not only in the public but also in the private sphere, that is for discrimination in the family. The structure of the Convention is based on the model of "real equality" (Figure 1).

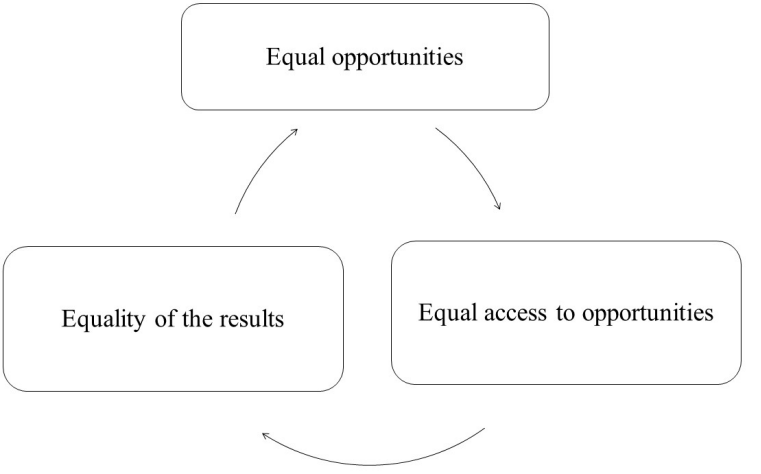

Figure 1: Gender equality model

Source: authors based on United Nations (1979).

Equality of opportunities is guaranteed by the commitment of state parties to take in all areas, including political, social, economic, and cultural, all relevant measures, including legislation, to ensure the full development and progress of women in order to ensure enjoyment of human rights and fundamental freedoms on a basis of equality with men (United Nations, 1979: Article 3). That is, such equal access of women to all resources of the country should be guaranteed by the legislation, policy of the state and executive bodies.

Equality of access to opportunities is guaranteed by committing States to take appropriate measures to eliminate discrimination against women, and to ensure women's rights on an equal footing with men in political and social life, education, employment, health, economic and social spheres. Besides, states take measures to eliminate discrimination against women in relation to representing their governments at the international level and participating in the work of international organizations, as well as the acquisition, change and preservation of their citizenship and their children (United Nations, 1979: Articles 7-14). Such equality is guaranteed by the state's obligation to remove obstacles to the exercise of women's rights.

Equality of the results is guaranteed by the obligation of states to recognize women as equal with men before the law (United Nations, 1979: Article 15). Therefore, the states undertake not only to take appropriate measures to protect the rights of men and women, but also to ensure that their equivalent results are recognized.

The principle of equality between women and men is established by the Convention on the Prevention of Violence against Women and Domestic Violence (Council of Europe, 2011). The provisions of the Concept oblige states to: take measures to ensure women's rights and eliminate discrimination against women; create a system of competent bodies to combat gender-based violence; identify stalking, forced abortions, forced sterilization, female genital mutilation and forced marriages as criminal acts. The Convention on the Prevention of Violence against Women and Domestic Violence reveals the content of important concepts on gender-based violence. Article 3 defines violence against women as a violation of human rights and a form of discrimination against women and means all acts of gender-based violence that cause or may cause physical, sexual, psychological or economic harm or suffering to women, including threats of coercion, or arbitrary deprivation of liberty, whether occurring in public or private life (Council of Europe, 2011: Article 3).

States are obliged to comply with the provisions of this Convention by taking measures to protect the rights of women victims of violence without any discriminatory grounds, including gender (Council of Europe, 2011: Article 4). The Convention applies to all forms of violence against women, including violence committed on the Internet. The structure of this Convention is based on a model of four basic principles: prevention, protection, criminal liability, and a comprehensive national gender policy (Figure 2).

The European Court of Human Rights (2020) identified the gender-based violence on social networks (that is cyber-violence) as a form of domestic violence against women in 2020. This was done by the judgment in Buturugă v. Romania related to cyberbullying. The case involved the victim's ex-husband illegally entering her web pages, including her Facebook account, and making copies of her conversations, private documents, and photographs. At the same time, the victim repeatedly appealed to the police, but they rejected her complaints, arguing that her ex-husband's behaviour was not serious enough to qualify as a crime in terms of domestic violence.

The European Court of Human Rights (2020) has ruled that cyberbullying is currently recognized as a form of violence against women and girls and can take many forms, including cyber intrusion in private life, intrusion into a victim's computer and the seizure, dissemination and manipulation of information or images, in particular private. Besides, the decision emphasizes that domestic violence, although it is physical violence, may include, but is not limited to, psychological violence or intimidation. Therefore, the European Court of Human Rights has recognized that the monitoring, access to or saving of spouses' correspondence without the right to do so must be taken into account when law enforcement agencies investigate domestic violence. The European Court of Human Rights has

ruled that cyberbullying is not just harassment on the Internet, but can also be a form of violence.

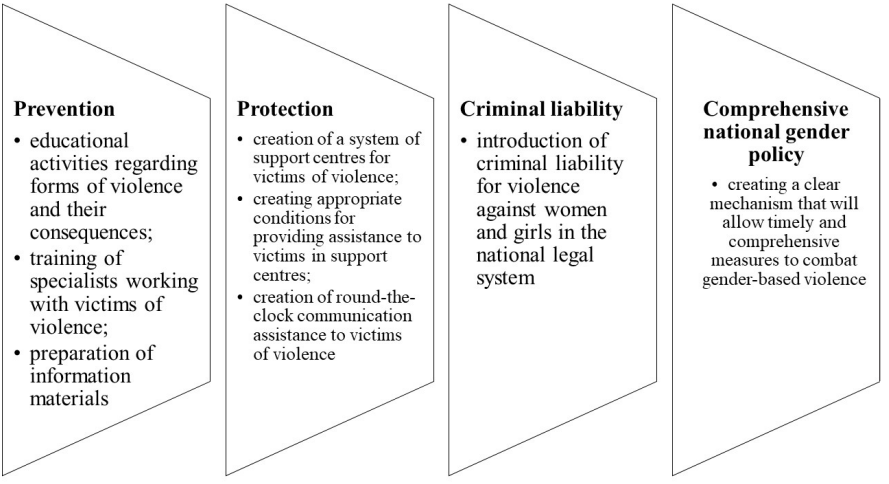

Figure 2: The system of counteracting gender-based violence

Source: authors based on Council of Europe (2011).

Gender-based violence is a manifestation of cyberbullying against women and girls through electronic means of communication and the Internet. Although cyberbullying can affect both women, girls and men, men are less sensitive to various forms of cyberbullying. The peculiarity of cyberbullying is that it has no boundaries and no time limits, because information can be spread instantly around the world. This type of violence is manifested by the manipulation of a person's psycho-emotional state and behaviour through the imposition of erroneous and dangerous ideas, beliefs, worldview. Unfortunately, the most common victims of cyberbullying are children, especially adolescents, as they spend a lot of time on virtual communication, entertainment and learning.

Cyberbullying of women and girls can take many forms, including: distributing pornographic material without the person's consent; gender-based abusive remarks; cyberstalking; messages with threats of harassment, hatred, coercion to sex, rape and murder; human trafficking online, etc. Besides, the manifestations of cyberbullying include: sending e-mails to intimidate and blackmail; dissemination of false information and false rumours; hacking of social network accounts, e-mail; discussion of people in public chats and forums in order to discredit and humiliate

them; use other people's passwords to change the account profile, etc. The main gender differences in terms of abuse on social networks are shown in Figure 3.

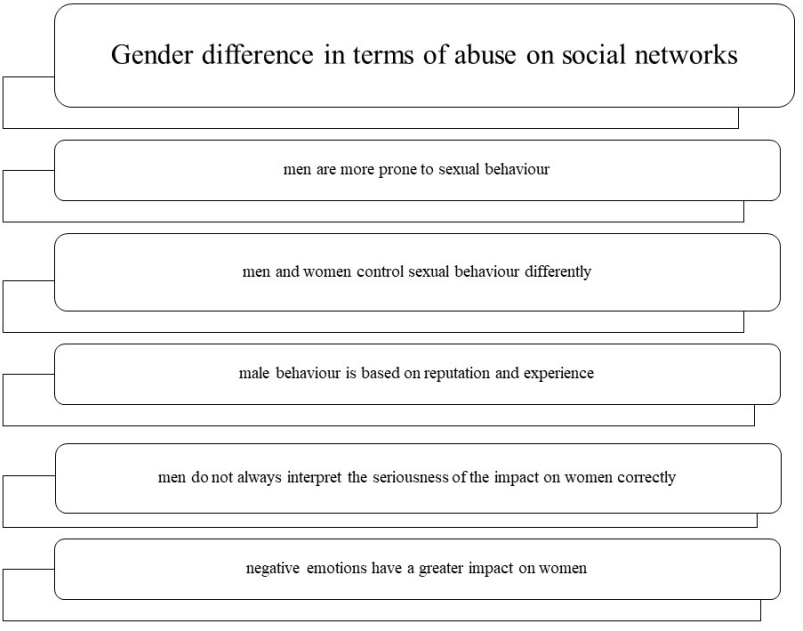

Figure 3: The main gender differences regarding abuses in the information space

Source: authors based on Brown *et al.* (2020).

According to the UN, every third woman in the world has suffered from violence. Every second woman killed in the world is killed by her partner or relative. Cyberbullying of women and girls can significantly increase this data, as Broadband Commission for Digital Development reports show that almost 73% of women have suffered from some form of online violence (Broadband commission for digital development, 2015). At the same time, some women and girls hide the fact of injuries from various forms of cyberbullying. This situation is explained by the fact that most of the content on the Internet and social networks is aimed at aggression against women or is a manifestation of it, for example, almost 94% of all content in adult films contain scenes with aggressive actions against women.

After watching pornography, men more often: report a decrease in empathy for rape victims; have a tendency to aggressive behaviour; believe that women who dress freely are more likely to be raped; feel angry at women who flirt but then refuse to have sex; experience a decrease in sexual interest in their girlfriends or wives; there is an increased interest in forcing partners to have sex. And given that boys aged 12 to 17 are the largest group of consumers of Internet porn, the first pornographic images they viewed will form their perceptions of sex and intimate relationships with violence against women (Broadband commission for digital development, 2015).

However, social networks can be not only a negative side contributing to cyberbullying of women and girls, but can also be a means of combating gender-based violence, as social networks as a source of information have a significant level of trust among the audience. Their versatility, associated with the ability to structure the communication space and objectively contribute to the development of civil society, make them a specific source of information. Social networks are increasingly becoming to some extent an informational imprint of civic activity, which uses such a communication channel to spread ideas, unite like-minded people in the community, organize events, and so on. Currently, almost all socially significant events leave certain information on social networks.

Law enforcement agencies actively use social networks not only to report the indicators of their activities, but also to form a certain awareness and social behaviour aimed at not committing illegal acts, which in turn will improve the crime rate. In order to combat fakes and misinformation, the competent authorities and developers of Facebook, Twitter, Google, YouTube, Reddit, Microsoft and LinkedIn must provide society with adequate access to the safe use of social communication networks. Therefore, in the fight against gender-based violence, there are effective social networks that can form a positive image of women, girls, mothers, wives, colleagues, girlfriends, as well as the proper attitude of men to them.

4. Discussion

Problems of using social networks as a means of combating cyberbullying against women and girls are associated with the lack of a coherent system of coordinated measures to combat gender-based violence and effective action of competent bodies to combat violence, as well as support centres for victims of domestic violence, which promote preventive and educational activities in the field of gender equality. Combating cyberbullying can be implemented through social networks by forming the basic values of gender equality through their content.

Social networking websites provide a platform for the rapid exchange of information, which can be a platform for spreading baseless rumours that are potentially harmful. Yao *et al.* (2021) believe that rumours can repeatedly change people's beliefs depending on their greater plausibility. Trust is used to spread false rumours, which allows measuring the influence of one person on others. People often hope to find people who have the least trust, but are able to achieve maximum impact. The impact of time and trust on the spread of anti-rumours on social networks was investigated by R.M. Tripathy, A. Bagchi, S. Mehta. According to them, time and trust are the main indicators that contribute to the emergence of false rumours on social networks.

An effective means of combating the spread of such rumours on social networks is the introduction of agents on the Internet, even if they do not transmit information (Tripathy *et al.,* 2010). Reputable methods of combating rumours on the social network have largely failed, because people do not obey the same authority. Therefore, to combat rumours, using the trust that people have in their friends is effective (Tripathy *et al.*, 2013). Levak proposes to apply methods of recognizing, preventing, and combating the phenomenon of misinformation on the Internet (Levak, 2020).

Soares and Sousa argue that digital social communications with the media have a positive impact on people's awareness, change their behaviour and awareness (Soares and Sousa, 2020). Their effectiveness, according to Gupta *et al.* (2018), is manifested in the activities of law enforcement agencies, which form certain content on the Internet to address the ticklish problem of modern society — combating domestic violence. According to Zou *et al.* (2021) and MacLure and Jones (2021) computer security support services should also counteract violence committed by an intimate partner on social networks. The competence of those services depends on the knowledge of employees who are able to provide effective assistance to victims and monitor the prevalence of such cases (MacLure and Jones, 2021; Zou *et al.,* 2021). Kurasawa *et al.* (2021) believes that feminist organizations, which are a model for the formation of epistemological, cultural and socio-political values, can make the contribution to the fight against gender-based online violence (Kurasawa *et al.,* 2021).

Cyberbullying can have negative consequences for social media users, in particular emotional stress, which not only leads to the refusal to use social websites but can also lead to suicide. Marín-Cortés and Linne (2021) singled out six main manifestations of cyberbullying: information theft, defamation on the Internet, impersonating another person, cyberbullying, sex harassment and porn in revenge (Marín-Cortés and Linne, 2021). According to Van Laer (2014), countering cyberbullying on the Internet should be realized in the form of video stories, rather than a selection of

analytical factors, and informing about the existing experience with which users associate themselves (Van Laer, 2014). Chan *et al.* (2021) believe that cyberbullying on social media should be counteracted by analysing the relationship between perpetrators, victims and bystanders.

Sarkar and Rajan (2021) divide violence against women on social networks into virtual and physical. Women who have experienced cyberbullying overestimate the structure of disembodied and embodied violence and are more wary of possible cases of cyberbullying in the future. Investigating cyber-aggression in social networks, Zych *et al.* (2021) consider its manifestation through interethnic relations, including the relationship between the individual and the social network user. As Salih *et al.* (2019), noted, the formation of cyberterrorism, including gender-based, is associated with the inconsistency and ineffectiveness of international legal and national mechanisms to counter it. Such a legal vacuum leads to large-scale uncontrolled consequences and losses around the world, which have no principles: age, race, religion and gender (Salih *et al.*, 2019). Harris and Vitis (2020) argue that society should create safe content of social networks and establish legal mechanisms for its regulation that will guarantee women's rights (Harris and Vitis, 2020).

Studying the phenomenon of domestic violence committed through social networks, the media and through outsiders, Fiolet *et al.* (2021) and Yardley (2021) emphasize the complexity of the abuse through the use of technology and its integral role in domestic violence (Yardley, 2021). According to Caridade *et al.* (2019) and Rocha-Silva *et al.* (2021) means of counteracting intimate violence committed in social networks should include analysis of age categories of victims and users of social networks and cyber dating abuse (Caridade *et al.,* 2019). As Brown *et al.* (2021) state, young men are more likely to face a multifaceted model of humiliation in social networks, and women are more likely to face a multidimensional model of sexual coercion. And only a multidimensional model of monitoring, control of threats demonstrates gender equality.

Mahoney *et al.* (2021) Mikkola *et al.* (2020) consider that victimization of gender-based violence on social networks is associated with jealousy, relationship disorders and the intensity of daily cell phone use. Henry *et al.* (2020) believe that in order to solve and fully understand the problems of gender-based violence in social networks, it is necessary to carry out a comprehensive study of subjects — women who have experienced abuse and violence through digital technology (Henry *et al.,* 2020).

As a result of the doctrinal analysis of the said problems of gender-based violence in social networks, we can note that scientists consider it reasonable to conduct further research on gender-based violence in social networks, provide effective recommendations for their practical implementation, which would adjust the directions of development of legal mechanisms for creating safe content on social networks.

Conclusion

Cyberbullying of women and girls is violence by a person or group of persons through information and communication tools against another person to harass, intimidate, violate the right to safe use of the Internet for education, communication, work, and leisure. This type of violence is characterized by inequality of power (men are stronger than women), systemic nature (regular sending of threats-messages), as well as asociality and anonymity (no direct contact with the victim).

The system for combating gender-based violence should be based on four basic principles: prevention, protection, criminal liability, and a comprehensive national gender policy. Educational activities on forms of violence and their consequences, training of specialists working with victims of violence and the availability of handouts will prevent violence against women.

The introduction of a system of support centres for victims of violence and the creation of appropriate conditions for aiding victims in support centres will allow protecting victims from repeated violence. The introduction of criminal liability for violence against women and girls in the national legal system will establish a mechanism for punishing such illegal actions. Gender-based violence can be effectively combated by creating a clear mechanism that will allow for the timely implementation of comprehensive and coordinated measures to combat gender-based violence. Social networks as an effective means of establishing positive public views can form a positive image of women and the proper attitude of men to them, thus will contribute to combating violence on the Internet.

The prospect of further research is to develop mechanisms to combat cyberbullying against women and girls, aimed at ensuring gender equality and protecting the rights of women and girls. Therefore, we consider the empirical study, as well as theoretical and methodological justification of effective systems for combating gender-based violence and a coherent policy on gender equality to be prospects of further research.

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The role of populist parties in spreading Euroscepticism

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Abstract

The aim of the paper was to analyse the current level of Euroscepticism in the European Union, to identify the current challenges populist parties face in the Euroscepticism realities and promotion. The main method of research was the observation method, which, together with the comparative method, revealed the selected issues of the paper. The conducted research has shown that the rise of populist parties primarily reflects a response to a wide range of rapid cultural changes undermining the core values and practices of Western societies. At the same time, the pandemic and changes in public consciousness have led to a decline in the activity of political parties and the introduction of Eurosceptic ideas per se. As part of the research, we have argued that the deepening of European integration is not perceived positively by member states as well, given the unnatural order of legal relations in the union. The findings will also require comparison with the results of the forthcoming EU elections, which has been identified as a roadmap for further author's research.

Keywords: ideas of European integration; Euroscepticism scenarios; cosmopolitan liberalism; populist party system; United States of Europe.

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El papel de los partidos populistas en la difusión del Euroescepticismo

Resumen

El objetivo del trabajo fue analizar el nivel actual de euroescepticismo en la Unión Europea, para identificar los desafíos actuales que enfrentan los partidos populistas en las realidades y promoción del euroescepticismo. El principal método de investigación fue la observación, que, junto con el método comparativo, reveló los temas seleccionados del artículo. La investigación realizada ha demostrado que el surgimiento de los partidos populistas refleja principalmente una respuesta a una amplia gama de rápidos cambios culturales que socavan los valores y prácticas fundamentales de las sociedades occidentales. Al mismo tiempo, la pandemia y los cambios en la conciencia pública han provocado un declive en la actividad de los partidos políticos y la introducción de ideas euroescépticas *per se*. A modo de conclusión, los autores han argumentado que la profundización de la integración europea tampoco es percibida positivamente por los estados miembros, dado el orden antinatural de las relaciones legales en la unión. Los hallazgos también requerirán una comparación con los resultados de las próximas elecciones de la Unión Europea, que se han identificado como una hoja de ruta para futuras investigaciones sobre el tema.

Palabras clave: ideas de integración europea; escenarios de euroescepticismo; liberalismo cosmopolita; sistema de partidos populistas; Estados Unidos de Europa.

Introduction

After World War II, relations between peoples of different nations became more cosmopolitan, and numerous bonds linked their lives. The belief that one lives in a homogeneous nation-state was weakened by flows of workers, expatriates, tourists, students, refugees, and diaspora communities. Cosmopolitanism emphasises the value of open national borders, shared multicultural values, and the diversity of peoples and lifestyles in inclusive societies (Lauwers *et al.,* 2021). Moreover, cosmopolitan ideas highlighting open borders and societies are combined with liberal values that challenge the authoritarian component of populism.

This emphasises the importance of horizontal restraints and balances in the representative democracy institutions, protection of minority rights, participation in elections and party membership, and tolerance of social, intellectual, and political diversity. This includes the process of pluralistic negotiation and compromise, the contribution of scientific knowledge to

rational policymaking, and the post-war architecture of global governance and international cooperation. Social liberalism is also related to the maintenance of equal rights for women and minorities, flexible rather than fixed gender roles, changing gender identities and LGBT rights, environmental protection, and secular rather than religious values.

The long-term processes of generational change at the end of the 20th century have been a catalyst for culture wars, as these changes are particularly worrying for less educated and older groups in the countries. Populists support charismatic leaders, reflecting a deep distrust of the establishment and mainstream parties, which are now led by educated elites with progressive cultural views on moral issues. The current cultural split separating populists and cosmopolitan liberals is seen as an orthogonal classic economic class split that dominated party competition in Western Europe in the post-war decades.

The spread of progressive values has stimulated a negative cultural reaction among people threatened by such developments. Less educated and older citizens, especially white males, who were once the privileged majority culture in Western societies, are outraged when told that traditional values are "politically incorrect" once they have felt marginalized in their own countries. Growing support for populist parties has disrupted the politics of many Western societies.

All these factors together have gradually produced their impact on the European Union, which has faced a number of compounding problems since its creation. In particular, the economic crisis and the plethora of refugees, the results of the British referendum, and the outbreak of the COVID-19 pandemic in 2020 have shaped the future of Europe over the past decade. These challenges have contributed to the emergence of populist parties, both left and right, seeking to undermine the current status quo (Gerbaudo, 2018), posing a threat to democracy.

This is a particularly favourable context for right-wing populist parties, which base their communication strategy on questioning the political conditions and foundations of legitimacy of the European Union, leading to an ideal scenario of Euroscepticism (Alonso-Muñoz and Casero-Ripollés, 2020). In this context, popular sovereignty functions as a link between left-wing and right-wing populist political actors. In both cases, they seek to regain control of their territory and regain lost autonomy in a highly globalised world in which membership of supranational organisations such as the European Union denies them the ability to legislate in their own countries. In Italy, the Five Star Movement was the most popular political choice in the 2018 elections (Chiaramonte *et al.,* 2018). In the 2017 French presidential election, the Front National won 7.5 million votes and made it to the second round, which has never happened before (Ivaldi, 2018).

In the UK, UKIP campaigned for Brexit, which resulted in an exit from the European Union (Usherwood, 2019). The Alt-Europe idea, seen as a conservative, xenophobic intergovernmental vision of a European "community of sovereign states," "strong nations," or "fatherland," that hates the "centralised" United States of Europe, is now gaining momentum (Bergmann *et al.,* 2019: 541).

Furthermore, Europe has experienced a crisis of values that has led many citizens to question the integrity and permanence of the European Union. This aspect is included in the manifestos of a large number of populist parties (Vasilopoulou, 2018). Such parties are not opposed to the basic principles of the European Union, but to those who lead that institution. In other words, Euroscepticism manifests itself in criticism of certain policies pursued by the European Union, rather than in condemnation of the institution itself.

In this context, a clear line can be drawn between the economic and social aspects of Euroscepticism. In particular, economic Euroscepticism is common among left-wing and right-wing populists, while cultural Euroscepticism may focus on national sovereignty or the difference between "us and them" regarding immigrants. It is worth noting that there is a difference between "soft" and "hard" forms of Euroscepticism. In this context, opposition to the European Union policy is considered a "soft" form, whereas opposition to the European integration process is directly seen as a "hard" form of Euroscepticism.

It should be noted that populism is a diverse phenomenon, which makes the chosen research topic relevant for analysis in the European context. Populist movements form an ideology that can be adapted to multiple contexts, which sees society as divided into two homogeneous and antagonistic groups, the pure people, and the corrupt elite (Gerstlé, 2019), and argues that politics should be an expression of the collective will.

Driven by economic anxiety, political cynicism, and cultural negative reactions to cosmopolitan elites (Norris and Inglehart, 2019), anti-establishment movements have often attracted the lion's share of media attention around the world. The rise of anti-establishment movements goes hand in hand with the development of a more controversial form of political competition, namely, electoral campaigns become increasingly violent. They rely on political attacks against opponents, become more and more uncivilised and promote emotional appeals designed to be the cause of developing fear and anxiety in society. It is worth noting that the chosen research topic is continually updated by the realities of political and pandemic challenges, and therefore requires a new level of scientific inquiry.

Given the above, the aim of the paper was to identify and expose the current problems of populist parties in the context of supranational crises and pandemics, and to assess the level of their direct impact on Euroscepticism in the European Union. In order to fulfil this objective, we defined the following tasks: 1) identify contemporary features of populist parties within the EU Member States; 2) reveal the state of Eurosceptic sentiment in the EU in the context of today's global challenges; 3) summarise the guidelines for improving the response to Euroscepticism in the context of European integration.

1. Methods and materials

As part of the scientific research, a significant scientific and methodological toolkit was approbated, allowing the formation of research vectors, and reaching well-founded author's conclusions in the field under study. The stages of the research are shown schematically in Figure 1.

The solution of the tasks outlined in the paper was made possible by using the leading practical method, i.e., observation. This methodological toolkit made it possible to draw the author's conclusions on the prospects for the spread of Eurosceptic ideas within the European Union in the context of the pandemic and the transformation of the political space after Brexit. At the same time, when combined with clustering and generalisation methods, the observation method allowed the projection of leading vectors of influence of populist parties on the EU political space within the framework of increasing globalisation challenges. This method provided support and grounding for the dubitability of further perspectives on Euroscepticism ideas as such.

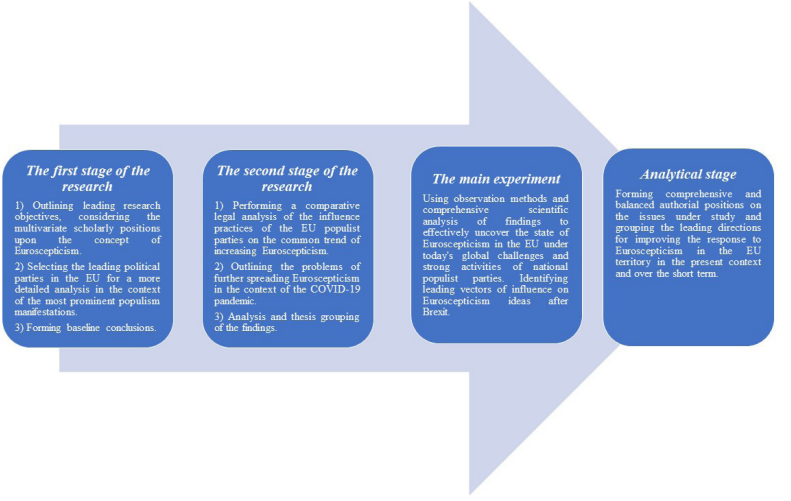

Figure 1. Generalised vector structure of the paper subject matter research (own creation)

The comparative method was also useful in grouping the framework programmes of the leading EU populist parties, comparing them, and formulating their proactive positions on the Euroscepticism vector. This method also allowed to draw attention to the negative and unscrupulous practices of the parties under study in introducing their propaganda ideas. At the same time, analytical and statistical methods made it possible to observe trends in the rise and fall of support for certain EU populist parties in previous national elections. The leading advantage of the study was the validation of indicators of the transformation of electoral support for populist parties, which allowed a fragmented projection of the author's vision of the prospects for the upcoming EU elections.

The historical-legal method was used to form the author's view of the genesis of the development of Euroscepticism trends and the creation and functioning of populist parties at the level of EU Member States. The method of content analysis allowed us to distinguish the programme materials of EU populist parties according to separate quantitative and qualitative parameters with the subsequent interpretation of the obtained results; the dogmatic method was used to interpret the essence and content of Euroscepticism ideas, to improve the conceptual and categorical research apparatus; the logical and normative method was applied to analyse the regulatory legal acts on political party activities in the territory of individual EU states.

Using the formal and dogmatic (logical) method as well as the systematic method, the objective and subjective attributes of populist parties in the EU territory are examined and their political shortcomings and vectors of influence on the EU political space are identified. The problematic and chronological method structured the research text, while empirical analysis helped to compare the historical development of both Eurosceptic ideas and the emergence of populist party movements.

The research has involved a considerable amount of empirical material, which has influenced the formation of the author's conclusions and positions disclosed in the paper. In this paper, we have comprehensively considered and cited thirty-six leading sources.

2. Results

The history of long-term cultural change in Western societies and the emergence of new green parties and progressive social movements based on these values is well known. Between 1970 and 1990, the rise of post-materialist concerns was a major component of social existence. In recent decades, however, the negative reaction to cultural change has become increasingly prominent in Western democracies. There are massive cultural changes taking place throughout advanced industrial societies, which seem shocking to those who hold to traditional values. Moreover, immigration flows, especially from low-income countries, have changed the ethnic composition of advanced industrial societies. New citizens speak different languages and have different religions and lifestyles than the indigenous population, reinforcing the impression that traditional norms and values are fast disappearing (The Economist, 2019).

Today, Euroscepticism continues to be conventionally interpreted as direct and unequivocal opposition to the process of European integration. Euroscepticism can be divided into "hard" and "soft". Hard Euroscepticism consists of principled opposition to the EU and may even demand the withdrawal of these states from the EU or deny them the prospect of EU membership. Soft Euroscepticism does not entail principled opposition to the EU but focuses on policy areas where there is a divergence between national interests and the EU trajectory. All manifestations of Euroscepticism can be articulated at both party and public (or grassroots) levels within and outside the EU.

The Euroscepticism of political parties depends on ideology, political, social and economic circumstances and the difference between domestic and foreign policy. Consequently, the participation of Eurosceptics may depend on pliability and/or situational adaptation. Eurosceptic parties tend to take a softer stance and do not oppose the idea of European integration as such.

However, in one way or another, they are opposed to its materialisation. These euro-rejecting parties take a tougher stance and oppose both the idea and materialisation. Radical left-wing parties have emerged because of their institutionalisation, leading to a diversity within the party family from traditional communists to social populists.

The analytical classification of party Euroscepticism includes the categories of revisionists, reformists, gradualists, maximalists, minimalists and refuseniks. The revisionist category opts for a return to the status quo before the adoption of a major EU treaty/decision, whereas reformists wish to modify one or more existing EU institutions and/or practices. Eurosceptic gradualists formally support the European integration process, although at a slower pace and with more caution. Maximalists are in favour of moving the existing process as quickly as possible towards higher levels of integration, while minimalists tend to accept the status quo but oppose further integration. Finally, the anti-decision parties strongly oppose participation in the EU or any of its constituent institutions. Within this mode of interpretation, the dominant brands of Euroscepticism among Brexit supporters in the ranks of the British Conservatives and smaller political actors (e.g., UKIP) can be located on a trajectory between a refusenik and maximalist position that opts for leaving the EU with the greatest possible benefits.

Euroscepticism is a very relevant concept in the study of left-wing and even right-wing populism. Left-wing Eurosceptics tend to see European integration as a project embodied on the neoliberal basis of globalised capitalism. Meanwhile, the two most important areas for right-wing Eurosceptics in Europe are: (a) varying degrees of opposition to immigration and insistence on the principle of strict borders; (b) defending national sovereignty against "Brussels domination." In Central and Eastern Europe, as early as the 1990s, a number of parties (usually right-wing) started articulating their nascent Euroscepticism, according to the conceptualisation that the EU "imposes" minority rights from the outside and weakens national sovereignty. Since the outbreak of the 2015 migration crisis, brands of Euroscepticism among some conservative right-wing parties have undergone a qualitative transformation; they are no longer focused on negotiating a compromise on EU membership terms, but rather nurture ambitions to revise the EU configuration (at least in specific policy areas) and reform its existing institutions and practices from within.

Eurosceptic parties have largely been accused of running tough campaigns. Negative messages, intimidation, and even impoliteness, are in line with the style of Eurosceptic movements, often incorporating strong populist discourse. Populist rhetoric tends to reflect a more transgressive political style, emphasising agitation, spectacular action, exaggeration, judicious provocation, and perceived violation of political, social, and

cultural taboos. Populists often demonstrate an open willingness to challenge standard social norms by displaying bad manners and introducing a more negative hard-line tone into the debate. Populists are more confrontational and aggressive and use more negative and more emotional campaigns. In this sense, harsher campaigns are typical of Eurosceptics. Most Eurosceptic parties are on the right (often radical) side of the political spectrum.

In today's context, populism reflects a deep cynicism and dissatisfaction with existing power, be it big business, banks, multinationals, media experts, elected politicians and officials, intellectual elites, and academic experts, as well as the arrogant and privileged rich people. At the same time, populists are characterised by an authoritarian preference for the personal power of a strong and charismatic leadership, which is perceived to reflect the will of the people. Populists also favour direct forms of majoritarian democracy to express the voice of the people through opinion polls, referenda, and plebiscites rather than the institutional checks and balances systems and protection of minority rights that are built into representative democracy processes.

After all, the populist discourse usually emphasises nativism or xenophobic nationalism under "ordinary people," suggesting that "the people" is one and that states should exclude people from other countries and cultures. Populism prefers monoculturalism to multiculturalism, national self-interest to international cooperation and development aid, closed borders to the free flow of people, ideas, labour and capital, and traditionalism to progressive and liberal social values (Figure 2).

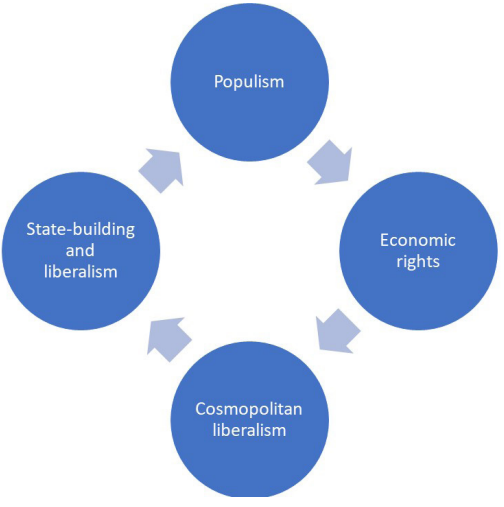

Figure 2. Conditional model of EU political party sectoral competition (based on author's comparative research)

Three indicators are mainly used today to classify populist parties: the anti-elite ratings from the Chapel Hill Expert Survey 2017 (Polk *et al.,* 2017), the Inglehart and Norris (2016) populist party scale and The PopuList (The PopuList, 2021). For example, the scale developed by Inglehart and Norris (2016) combines the party's expert assessments of the following attitudes and positions: 1) support for traditional social values; 2) opposition to liberal lifestyles; 3) promotion of nationalism; 4) support for a strict rule of law; 5) assimilation for immigrants; 6) support for restrictive immigration policies; 7) opposition to ethnic minority empowerment; 8) support for religious principles in politics and 9) support for rural interests. The scale ranges from 0 to 100, with parties with a rating above 80 classified as populist. The Populist is a classification developed by a group of more than 70 scholars from across Europe and around the world who define political groups as extreme right-wing, extreme left-wing and/or Eurosceptic. Given the above, it is possible to roughly divide traditional and populist EU parties into three groups as follows: left-wing, right-wing, and centrist (Figure 3).

Today, unlike most populists of the past, the parties claim to be committed to democracy, but such a democracy in which the sovereignty of the people is unlimited and materialised in the image of an all-powerful leader. These characteristics are common to all populists. By 2020, however, the most impressive thing was their visible progress in many countries. This was particularly evident in the 2019 European Parliament elections, when right-wing populists were the most numerous and strongest.

However, by general recognition, unlike in Hungary, Poland, or the Czech Republic, most of these right-wing populists did not make it into power structures, with the exception of Lega Nord in Italy (later known as Lega). This party has been part of government coalitions four times, most recently between 2018 and 2019. But although they are in opposition, right-wing populist parties do influence the way political vectors of reform are embodied. In fact, several opponents of populism, such as Matteo Renzi in Italy between 2014 and 2016, Emmanuel Macron in France during his 2017 presidential campaign and Boris Johnson in the UK deliberately used populist style to win or even govern.

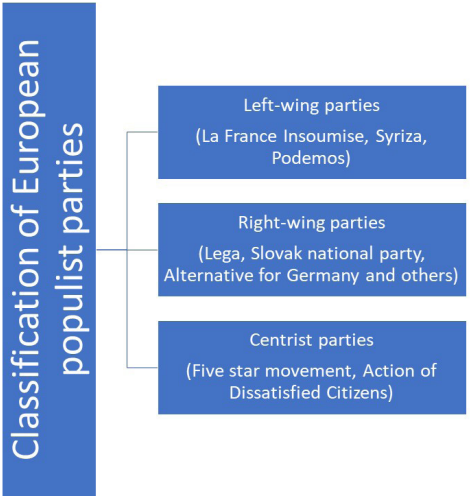

Figure 3. Classification and examples of EU populist parties (as summarised by the author)

Voter support for populist parties increased in November 2021 in three of the 27 European Union member states and fell 10 times in the last month, according to a poll conducted by Europe Elects (2021), a German start-up that aggregates opinion poll results from across the EU. According to Bloomberg calculations, the popularity of far-right parties rose in the Netherlands, Portugal and Cyprus and fell in Estonia, France, Slovenia, Latvia, Denmark, Italy, and Poland (Bershidsky, 2021). The biggest increase of 2.0 percentage points was recorded in the Netherlands and the biggest drop of 0.8 points was recorded in Estonia. The far-left political forces expanded in the Netherlands, Spain and Denmark and declined in France, Greece, Portugal, Ireland, and Cyprus.

Support for the extreme left increased most by 0.5 percentage points in the Netherlands and fell most by 1.9 points in France. Eurosceptic parties improved their poll results in the Netherlands, Spain and Finland and declined in France, Greece, Estonia, Slovenia, Ireland, Portugal, Italy, Poland, and Sweden. The biggest increase of 3.0 percentage points was in the Netherlands and the biggest drop of 2.6 points was in France (Bershidsky, 2021). It can be stated that although experts mostly agree that populist political leaders or parties exhibit a high level of anti-elitism, definitions of populism differ. Within the EU, there are significant differences both between countries and between the ideological varieties of populism. While the success of left-wing and valence populists is concentrated in certain

areas, right-wing populist parties have consolidated as key players in most EU countries.

The Covid-19 pandemic has revealed many populist inconsistencies, incoherencies, and demagogy, whether the respective parties are in opposition or in power, marking a turning point for the populists, the beginning of their decline. The population still tends to approve measures and restrictions, mainly in Italy and France. The occasional populist attacks on foreigners and migrants are also less evident now when the overall priority is health. In Italy, mentions of the Lega party are declining in the polls (although it still accounts for almost a quarter of the electorate and remains the leading Italian party), as is the popularity of Salvini, who has been asked by leading members of his own party to change his approach. In France, Marine Le Pen is well placed in the polls ahead of the first round of the 2022 presidential election, receiving between 24% and 27%, according to an IFOP poll conducted in late September.

Right-wing populist parties in Europe took a huge step towards unification after 16 right-wing populist parties from 14 countries issued a joint statement calling for a European Union based on sovereign member states instead of a federal bloc. The main forces behind the declaration are the Polish ruling party, Law and Justice, Viktor Orbán's Fidesz, Marine Le Pen's National Rally, with Matteo Salvini's Lega and Georgia Meloni's Brothers of Italy also present (Zsiros, 2021). The possible emergence of new populist right-wing forces is not an immediate threat to the current Brussels establishment, as their number of MEPs will remain unchanged. In the long run, however, it could ultimately affect decision-making in the EU. If their parties manage to remain a cohesive force until the 2024 European elections, they will have a chance to position themselves as the main opposition force in the next European Parliament.

Thus, the 2019 European Parliament elections were held against a backdrop of growing polarisation around the world, a phenomenon that has also appeared in these elections, triggered by the recent multi-faceted crises in the EU. However, a clear sign of polarisation in the EU may be the divisions associated with European integration, an issue that tends to be much more relevant to Eurosceptics than to Europhiles. European integration has moved from a bureaucratic political field to a highly polarised and topical issue in European party systems. This increasing prominence began in the 1990s and continues to grow. It is mainly due to political entrepreneurs pointing out the problem of European integration. The main parties tend to occupy a pro-integration space and avoid emphasising the issue.

Populist parties have selectively politicised individual crises, while adopting different positions on European integration. There is a difference between left-wing and right-wing versions of populist Euroscepticism politics. At the same time, all left-wing populists have stood their ground in

criticising Europe mainly in social and economic terms. The Great Recession provided an opportunity for right-wing populists to develop similar discourses only to return to culturally inspired notions of Euroscepticism at the peak of the migration crisis. In Austria, for example, there is already a long-standing populist radical right-wing party in the Freedom Party (FPÖ).

It has established itself as a party focused on defending Austrian identity with an anti-immigration and soft Eurosceptic stance (Hadj Abdou and Ruedin, 2021). The Flemish interest (VB) is a populist right-wing radical party which seeks to represent Flemish nationalism and demands secession from Belgium (Sijstermans, 2021). The Flemish interest is against multiculturalism and is a soft Eurosceptic. The party won 12% of the vote in the 2019 national elections (with 18.5% in Flanders) and 12.1% in the 2019 European Parliament elections. In turn, the Civic Alliance is considered to be the only populist party in Cyprus. It positions itself as "post-ideological" and focuses its vision on Cyprus and its citizens.

The party is primarily concerned about a peaceful settlement of the Cyprus issue aiming to remove the Turkish army from the island as the only prospect for the security and prosperity of all ethnic groups in the common homeland. In France, there is one of the oldest and most established populist parties in the form of the Rassemblement National (RN, formerly Front National). Marine Le Pen's leadership has changed the position of the party under its former leader Jean-Marie Le Pen in an attempt to soften the limits of its hardline stance on immigration, but remains a party that fights and mobilises immigration, law and order and national identity.

The Rassemblement National takes a steady stance of soft Eurosceptics (Buswell, 2021). Hungarian politics in the last decade have been dominated by Prime Minister V. Orban and the populist Fidesz force (together with its satellite the Christian Democratic People's Party). Fidesz's convincing victories in the last three general elections have resulted in a parliamentary supermajority, giving V. Orban ample opportunity to put Hungary on an illiberal democratic path. Italy presents numerous examples of populism. The oldest party still represented in the Italian parliament is Lega, a radical right-wing party that won 34.3% of the vote in the 2019 European Parliament elections, joining forces with the M5S to form a government after the 2018 general elections (Vercesi, 2021).

In September 2017, the far-right Alternative for Germany won 12.6 % of the votes, entering the Bundestag for the first time with an anti-euro and anti-immigration platform. In Germany, the economic disparity between East and West has been used as a plausible explanation for Euroscepticism, right-wing extremism, and anti-migrant sentiment, which is stronger in the poorer countries of the former East. The status quo orientation of German politics became more entrenched and highly unsustainable in European

politics than in any other sphere. The country was devoid of the political and economic problems faced by other parts of Europe: the economy was booming, while unemployment was at record lows and the budget was balanced.

There was no fundamental erosion of the political party system, as happened in France or Italy. The Germans therefore had little motivation for radical change. They were among the biggest beneficiaries of the bloc's single market and the eurozone. At the same time, Euroscepticism has grown steadily in many other member states. After Brexit, there were widespread fears that the EU would break up. Berlin's response to this was to prevent the break-up of the EU, but it had no clear idea how to move forward. It can be stated that Brexit is a clear manifestation of Euroscepticism and a consequence of the subversion of populist parties. This event has fundamentally transformed the ideas of the respective political movements (Figure 4).

Figure 4. Vectors of influence of EU populist parties on ideas of Euroscepticism after Brexit (as summarised by the author)

After the Brexit referendum in 2016, the European right-wing populist parties (PRR) have moved towards an alternative European political agenda. The Alt-Europe is a conservative, xenophobic intergovernmental vision of a European "community of sovereign states," "strong nations," or "fatherland," that hates the "centralised" United States of Europe. European integration has deepened dramatically since the 1980s, has expanded, and has barely survived a series of existential crises since 2005. The Eurosceptic *PRR* parties have benefited from the following politicisation and objection to the EU. The *Brexit* referendum campaign pushed them towards the *EUxit* campaign.

However, amid the popular reaction to *Brexit* chaos and the *PRR's* increased confidence in winning over national and European authorities, they changed their focus to an alternative European reform of the EU. They use the theses of an ancient ethnic European civilisation of diverse, peacefully cooperating, free sovereign nations to exclude the EU cultural unification and present an alternative Europe. This civilisation may be Christian or secular, conservative or humanist, with free trade or protectionist steady state, and avaricious or demonstrative of solidarity. But the *PRR* will protect it from the artificial, homogenising totalitarian experiment of the EU imposing liberalism and Islamist colonists. At the same time, it cannot be asserted with certainty that European right-wing populist parties have gained much support and strengthened their position in the political space during the pandemic.

3. Discussion

The study has shown that the mainstream parties on both the right and the left political spectrum have become unable to offer significant solutions as state sovereignty has been undermined by a neoliberal form of globalisation and the EU integration process. States can no longer control the flow of capital, goods, services, and people; they can no longer control their borders. Furthermore, authoritative parties do not want to change the current situation. The above is worrying because political parties have adopted neoliberalism not only as a set of economic policies, but also as a rational approach from which to conclude that globalisation is irreversible and there is no alternative (Sandrin, 2020).

The detrimental economic and political effects of neo-liberal globalisation and migration patterns have generated affects (anxiety, fear, hatred, resentment) that are successfully mobilised by right-wing political parties. This author's thesis is supported by Sandrin (2020), who points out that effective and ethical coping strategies should include political discourses that appeal to the general population and that are inclusive and pluralistic. This progressive political discourse should try to formulate a response to these very real fears and anxieties, and which should be adapted to different historical, geographical, and cultural contexts, namely, inclusive, pluralistic and agonistic.

We can conclude that populist radical right parties have become a permanent feature of many party systems in European countries, and their electoral success has increased since 2015, when many migrants and refugees arrived in the EU (Cordis, 2021). Studies on *PRR* show that these parties seek to influence policy making in different ways. In this respect, the view of Lutz (2019) is correct which is that the growth of *PRR* can indirectly

influence the political positions of major parties by introducing new subjects or otherwise articulating existing winds of political development, thereby pushing governments and other parties to change their own positions.

A number of scholars emphasise that *PRRs* influence the positions of other parties directly when they are in government or indirectly by treating topics such as migration differently than other parties (Bergmann *et al.,* 2021). Nevertheless, as Lazar (2020) notes that in France, for example, populist parties are still unable to attract the large sections of the population they need to reach the presidency. Also, Eurosceptic movements tend to be small opposition parties and parties that tend to be negative towards their opponents (Nai *et al.,* 2021). However, Lega has reinforced its nativist and populist profile, relying on being an anti-immigration and Eurosceptic party, but now in terms of a full-fledged national force (Taggart and Pirro, 2021). The positions of scholars corroborate the author's thesis on the prospects of *PRR* influence on the forthcoming EU elections.

As the EU has become a more visible and polarising issue in Western European party systems, many parties will need to discuss their position on the EU integration (Wagner, 2021). In fact, the M5S in Italy was the only actor who oscillated between different structures other than the simple right-wing populist parties (Pirro *et al.,* 2018). Therefore, further research into whether PRR narratives can be consistent enough to organise themselves in opposition and undermine the EU would be invaluable (Cooper *et al.,* 2019). This could be linked to new work on policy positions within soft Euroscepticism. Policy research mechanisms such as 'uploading' and 'downloading' could also be borrowed to explore how narratives of national politics and core identity narratives interact (McMahon, 2021).

The scholars support the author's position that severe domestic measures within countries, such as blockades, will inevitably go hand in hand with border closures and travel restrictions, leading to a temporary de-globalisation of the world or a partial reversal of certain tendencies of globalisation due to reduced cross-border movements. While populism in Western Europe will remain a force to be reckoned with in the foreseeable future.

The specific manifestations of the COVID-19 pandemic have led to nationalist populist actors on the political fringes struggling to remain relevant and to formulate messages that are both at odds with the establishment and resonate well with the public anxiety associated with COVID-19 (Dandolov, 2021). The pandemic has led to a significant loss of confidence in the EU among the population. In turn, Brexit has shown that deeper European integration is not the natural order of events and that EU citizens need to understand the benefits of membership (Leonard and Puglierin, 2021).

The scholarly search has substantiated that the politicisation of European integration has increased throughout Europe. In southern Europe, the trend cited should be interpreted as an expression of an alternative vision of Europe, contrary to the vision that prevails in some north-western European countries (Kriesi, 2020). On the contrary, in north-western Europe, where the politicisation of European integration has mainly been driven by the radical right, and in central-eastern Europe, where it has mainly been the result of the mobilisation of the conservative nationalist right, it is an expression of nationalist reaction.

To effectively overcome the further activation of populist parties, it is advisable to provide more opportunities for European citizens to produce direct influence in key decisions that are taken at the supranational level and affect their lives. Undoubtedly, in this context, the basic social protection system in the EU needs to be updated and effectively enforced, enabling people to escape poverty and live a decent life regardless of their country's economic influence.

Conclusions

Despite the PRR's overall narrative resources, intense nationalist chauvinism, rivalries, and political proclamations in manifestos will hinder the PRR's concrete collaboration to realise an alternative European dream.

The COVID-19 pandemic has led to ruling parties, even in countries such as Germany, finding themselves at odds with EU institutions and increasingly looking at issues because of "national" rather than "European" views, putting some of the major issues of nationalist-populist parties on their agenda. At the same time, fragmented ideas of Euroscepticism, produced by the active positions and actions of populist parties, have receded in the face of the pandemic, giving particular prominence to health promotion issues.

Some states have begun to oppose the further development of populist parties by launching active counter-policy. At the same time, an effective and ethical strategy to counter Euroscepticism should not see the political arena as a foundation for escalating conflict, since this very type of political discourse has alienated many voters and opened the way for right-wing populist parties claiming to actually listen to the people' troubles.

The scholarly debate on the chosen topic showed that the highlighted issues will need further, more detailed study over the long term. The COVID-19 pandemic continues to adjust the spread of Eurosceptic ideas in EU member states. Consequently, the activities of EU populist parties against the background of supranational changes will require further comparative analysis, which will be conducted by the author of the paper.

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Normative regulation of witness immunity in international law

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Abstract

Through materialist dialectics, the article is dedicated to the study and solution of theoretical and practical questions related to the right of a person not to declare or give explanations about himself, his relatives, or close relatives. Interested here was the thorough review of the doctrinal sources of this right, the meaning and methodology of its research, the concept and content of the right of a person not to testify, the peculiarities of this right in Ukraine and in the world, its legislation, as well as its guarantee of implementation. In addition, based on the analysis of the legislation of each country, the authors identify the characteristics of the guarantee, analyze the theoretical aspects and the practical problems of granting the police and judicial authorities the right not to declare or give explanations about themselves. It is concluded that the immunity of witnesses means a set of rules that exempts certain groups of witnesses from the obligation to testify in criminal proceedings, as well as from the obligation of the witness to testify against himself. In this sense, immunity for a witness is divided into two types of imperatives: (absolute, unconditional) and device (relative, conditional).

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Keywords: criminal proceedings; witness; witness immunity; testimony; guarantees.

Regulación normativa de la inmunidad de testigos en la legislación internacional

Resumen

Mediante la dialéctica materialista el artículo está dedicado al estudio y solución de cuestiones teóricas y prácticas relacionadas con el derecho de una persona a no declarar ni dar explicaciones sobre sí misma, sus familiares o parientes cercanos. Interesó aquí la revisión minuciosa de las fuentes doctrinales de este derecho, el significado y metodología de su investigación, el concepto y contenido del derecho de una persona a no testificar, las peculiaridades de este derecho en Ucrania y en el mundo, su legislación, así como su garantía de implementación. Además, con base en el análisis de la legislación de cada país, los autores identifican las características de la garantía, analizan los aspectos teóricos y los problemas prácticos de otorgar a las autoridades policiales y judiciales el derecho a no declarar o dar explicaciones sobre sí mismos. Se concluye que, la inmunidad de los testigos significa un conjunto de normas que exime a ciertos grupos de testigos de la obligación de declarar en los procesos penales, así como de la obligación del testigo de declarar contra sí mismo. En este sentido, la inmunidad para un testigo se divide en dos tipos de imperativos: (absoluto, incondicional) y dispositivo (relativo, condicional).

Palabras clave: proceso penal; testigo; inmunidad de testigos; testimonio; garantías.

Introduction

Ensuring the possibility of democracy in the modern sense applies to all spheres of the state and society, including criminal justice, which involves a wide range of participants. Accordingly, state protection of rights and freedoms is needed by all participants of criminal proceedings without exception, regardless of the procedural status, position, interest in the results of criminal proceedings (Kharitonova, 2019).

Many countries around the world are currently undergoing reforms and changes, are in the process of finding the optimal political and legal model of state building that would meet European standards and a universally

recognized system of democratic values. Namely, building a system of effective state mechanism in the person, first, of qualified officials of relevant public authorities, which would ensure human and civil rights, is one of the main tasks provided by the Association Agreement between Ukraine and the European Union.

Legislators of such states often refer to the positive practical experience of foreign countries in various fields, including the right to ensure the right of a person not to testify or explain about himself, family members or close relatives. The implementation of this right in practice is sometimes inconsistent and ambiguous, both at the regulatory level and at the institutional and organizational level (Berezhanskaya, 2019). The above encourages the analysis of ensuring the right not to testify or explain about oneself, family members or close relatives in foreign countries in order to study their experience and its further use in Ukrainian realities.

The purpose of the article is to consider the current problems that arise in connection with the reform of criminal procedure legislation, which has created certain difficulties in law enforcement practice, including the implementation of the rules governing the institution of witness immunity. In addition, a detailed analysis requires regulatory regulation of witness immunity in the legislation of foreign countries.

1. Methodology of the study

The methodological basis for writing this scientific article was the dialectical-materialist method of cognition of social and legal phenomena, as well as a set of general and special methods and techniques of scientific cognition, which currently used in legal literature, which made it possible to study the problems forms. In the study of doctrinal and normative sources of the right of a person not to testify or explain about himself, family members or close relatives, such general scientific methods as observation, description, comparison were used to determine certain legal categories that characterize the essence and content of this right.

Special methods were also used, in particular: systematic analysis, as well as formally logical and system-structural methods, which helped to clarify the legal nature and essence of the right not to testify or explain to law enforcement and judicial authorities about themselves, family members or close relatives; using the formal legal method to study the provisions of the Constitutions and Criminal Procedure Codes and other legal sources of Ukraine and other countries, clarified the content and meaning of the concepts and terms used, substantiated conclusions and proposals for their interpretation in certain proceedings; thanks to the comparative-legal and structural-functional method, the scientific positions on the procedural

guarantees of ensuring and implementing this right were analyzed; the statistical method contributed to the generalization of the results of the study of the materials of criminal proceedings; due to of modeling and forecasting, specific proposals were formulated for the exercise of the person's right not to testify or explain about himself, family members or close relatives.

2. Analysis of recent research

In scientific circles, fundamental work is devoted to ensuring the right of a person not to testify or explain about himself, family members or close relatives L. Mises (Mises, 1997), V. Makhov, M. Peshkov (Makhov and Peshkov, 1998), K. Gutsenko, L. Golovko, B. Filimonov (Gutsenko *et al*., 2002), W. Bryson, (Bryson, 1992), N. Volosova, O. Fedorova (Volosova and Fedorova, 2008), K. Kalinovsky, (Kalinovsky, 2000), T. Loskutova (Loskutova, 2005), T. Aparova (Aparova, 1996), S. Volkotrub (Volkotrub, 2005), O. Galagan (Galagan *et al*., 2011), L. Udalova (Udalova, 2004), O. Belkova (Belkova, 2004).

The scientific achievements of these scientists are beyond doubt, and some inferences formed the basis of the author's conclusions and contributed to the disclosure of problematic issues and develop ways to solve them. At the same time, certain issues related to the implementation of the privileges and immunities of the participants in the criminal proceedings remain unresolved. Today there is a need taking into account current trends in the development of criminal procedure, a new theoretical understanding of the legal nature and the concept of witness immunity in modern conditions; elucidation of the peculiarities of the legal regulation of criminal proceedings against persons with privileges and immunities in the post-Soviet countries; determining the features of legal regulation under the criminal procedure legislation of Ukraine and ensuring the right of a person not to testify or explain about himself, family members or close relatives and its compliance with international standards, etc.

3. Results and discussion

3.1. Ensuring the right of a person not to testify about himself, family members or close relatives in foreign legal systems

Any criminal proceedings cannot be imagined without the participation of a witness. This is because the witness is an indispensable source of information that is important for establishing the presence or absence of circumstances to be proved in criminal proceedings, as well as other

circumstances that are important for the proper resolution of criminal proceedings. Witness testimony is the most common type of evidence.

Ensuring the realization of the right of a person not to testify or explain about himself, family members or close relatives as a constitutional guarantee against self–blame first established in the late seventeenth century in the constitutional law of England. This norm later implemented in the constitutional law of the United States of America. In the V amendment to the Constitution of the United States of America and is considered the basic principle of interrogation of the person both in police, and in particular in court. The content of the Fifth Amendment to the Constitution of the United States of America states: "No person shall be compelled to testify against himself in any criminal case" (Code of criminal procedure of the republic of belarus, 1999: p. 46).

The rules governing the institution of witness immunity are divided into separate rules, chapters and sections of most legislative provisions of the United States, France, the Federal Republic of Germany and the United Kingdom, as well as a number of other countries. The essence of witness immunity based on explaining the right of the accused or detainee to remain silent and to refuse to testify. Meanwhile, the laws of some countries use concepts such as "witness immunity" and "witness testimony privilege".

For example, United States legislation contains both the notion of "witness immunity" and the notion of "witness testimony privilege", using the term "privilege" and treating this right as immunity (Maklakov, 1997). Theoretical approaches of foreign scholars consider privilege as a privilege (Maklakov, 1997). For example, L. Mises position based on the identity of such concepts as privileges and privileges (Mises, 1997). The laws of Great Britain, the United States, Canada, and other countries speak of privileges.

The legislation of the United States of America considers immunity for a witness and the privileges of witnesses as independent legal categories and defines them as: 1) the privilege against self–incrimination (or the right to silence); 2) the privilege of witness testimony; 3) immunity of witnesses. Privileges are provided for the testimony of witnesses, for example, for the accused it is a privilege of self–blame.

The privilege of self–incrimination in the criminal proceedings and judicial practice of the United States of America and the United Kingdom is expressed in three basic rules, which explain to the detainee that he has the right to remain silent; everything he says can be used as evidence against him; he has the right to be present during the interrogation of a lawyer (Makhov and Peshkov, 1998). It should be noted that this rule applies only to suspects who are under arrest, as far as persons who are not under arrest are concerned, this rule does not apply to them (Bryson, 1992).

The provisions of the immunity of witnesses are set out in Art. 6001–6005, placed in Chapter 18 of the Code of Laws of the United States of America and contain only the general rules of this institution. K. Gutsenko aptly stated that, many of its details are specified in the norms of unwritten law and approved by the courts in the relevant rules. You can also get an idea of them under the Unified Rules of Criminal Procedure and borrowed almost entirely from many states of the State Model Law on Witness Immunity (Gutsenko *et al*., 2002).

Legislation on witness immunity differs significantly from state to state and differs from that in federal law, so it should be noted that United States law does not contain uniform provisions governing the institution of witness immunity.

The provisions on witness immunity were established by the Fifth Amendment to the Constitution of the United States of America and stated that no one should be coerced in a criminal case, to be a witness against himself. In addition, part of this provision is the XIV Amendment to the Constitution of the United States of America, which prohibits involuntary admission of guilt. The considered provisions began to have a significant impact on law enforcement practice only after the decision in the Miranda case on June 13, 1966. Prior to this decision, police officers applied such measures of influence to detainees that would allow them to obtain a confession.

An important component of witness immunity is the voluntary testimony given by the detainee. This has been repeatedly pointed out by the Supreme Court of the United States of America. Considering Miranda's case, he noted "the need to create conditions for the application of the Fifth Amendment to the Constitution of the United States not only in the courtroom, but also in any other place where a person may be in danger of restricting his rights and freedoms. Compliance with the rules of voluntary testimony of the United States Supreme Court proposes to support the relevant guarantees", which are reflected in the law.

These include the responsibilities of persons conducting criminal proceedings. E. Warren clarifies the procedure, stating: "prior to the interrogation, the person must be warned of his or her right to remain silent, and any statement made by him or her may be used as evidence against him or her. She has the right to have a lawyer. The accused may waive these rights, but in this case, it is necessary to check the voluntariness and awareness of his decision. If the accused later in any stage of the criminal case shows a desire to have a lawyer, questions in this case he cannot be asked (Israel *et al.,* 1989).

US law pays special attention to the admissibility of evidence in connection with the application of the provisions of witness immunity and

the admission of guilt by the accused. Violation of the criminal procedure is grounds for declaring the evidence inadmissible. These provisions are set out in IV, V, VI, XIV amendments to the US Constitution. When the evidence is declared inadmissible, the principle of "fruits of a poisoned tree" applies. According to him, all data, information, and information that became known through the use of inadmissible evidence are excluded from the evidence base in a criminal case.

The prohibition on the use of physical and mental coercion in the investigation process is linked in US law to the question of the admissibility of such recognition. It is the duty of the court to carefully consider such complaints. Any person shall, after such circumstances have been established, be released from any persecution (Volosova and Fedorova, 2008).

The implementation of witness immunity is impossible without explaining to the accused the consequences of his consent to testify. At the same time, the legislator provided a number of guarantees for the voluntary nature of such recognition, placing the burden of proving this fact on the prosecutor. Both federal and state law provides for these responsibilities.

In many legal provisions of foreign law, the provisions of witness immunity are considered as part of the right to protection. For example, in United States law, before any interrogation, a person should not only be warned in clear and unambiguous terms that he or she has the right to remain silent, that anything he or she says may be turned against him or her, but that she has the right to have a lawyer present.

The presence of a lawyer during interrogation is one of the guarantees of the voluntary confession made by the accused (Kalinovsky, 2000). The United States Criminal Procedure also establishes a rule that a detainee may refuse to testify at any time during questioning or answer certain questions, indicating the need to consult with his or her lawyer. In this case, the interrogation must be terminated (Volosova and Fedorova, 2008).

According to the analysis of foreign constitutional and other sectorial legislation, today such a rule is reflected in most constitutions of the world.

The Constitution of the Kingdom of Spain (Article 24) guarantees everyone the right to effective protection by a judge and a court in the exercise of their legitimate rights and interests, and in no case is such protection denied. According to part 2 of the mentioned article, everyone also has the right to: – consideration of his case by the judge to whose jurisdiction it is assigned by law, – protection and assistance of a lawyer, – information on the accusation, observance of all guarantees, – to use all means of evidence provided for protection, – not to testify against oneself, – not to plead guilty, – to the right of presumption of innocence. The law defines the cases when due to family ties or professional secrecy, a person

is not obliged to testify about actions that may previously be considered illegal" (Constitutions of the EU, 2021).

Thus, we see the similarity of the investigated law only in the part not to testify about oneself. Family members and close relatives are not mentioned in the article of the Spanish Constitution, which, in fact, is the right to differ from the constitutional and other sectorial legislation of Ukraine.

A comprehensive analysis of the right of a person not to testify or explain about himself, family members or close relatives forces us to pay attention to the legislation and practice of its implementation in other countries. In contrast to the legislation of unitary states, the national legislation of federal states provides for slightly different constitutional provisions, as well as the relevant provisions, detailed at the level of other sectorial legislation.

Thus, the Constitution of the Federative Republic of Brazil (Article 5, paragraph LXIII) requires that every detainee be informed of his rights, including the right not to answer questions, namely: "The detainee must be informed of his rights, including the right to remain silent, a guarantee for help from family and a lawyer" An analogy is seen, in fact, as in the above states.

The right of a person not to testify or explain about himself, family members or close relatives is also reflected in German law. According to the Constitution and the German Code of Criminal Procedure, testifying is a right, not an obligation, of the accused. Therefore, the representative of the body conducting the criminal proceedings should be explained that he may refuse to testify in the case. The defendant's admission of guilt in committing a criminal offense, in contrast to French law, is conclusive evidence.

It is interesting that the refusal to plead guilty entails an increase in punishment. In turn, the Constitution of France enshrines that everyone has the right not to testify against himself enshrined in sectorial law. It can be concluded that in France the right of a person not to testify or explain about himself, family members or close relatives has a double meaning, namely: it is a means of proof that is necessary to establish in the case; is considered as one of the means of exercising the right to protection (Constitutions of the EU).

There are several prohibitions on evidence in the German Code of Criminal Procedure, which are divided into two groups. The first of these is the prohibition of establishing certain factual circumstances (related, for example, to a state secret) and the use of certain sources of evidence (for example, immunity for a witness). The second group of circumstances includes evidence that significantly violates the legal sphere of the accused (Filimonov, 1994). Thus, foreign law is usually quite meticulous about compliance with the rules of witness immunity as a condition for the admissibility of evidence.

The second important privilege is the privilege that exempts relatives from testifying as well as others. It should be noted here that in some legislative acts this list contains a certain list, in others this list may vary. Yes, Art. 335 of the Criminal Procedure Code of France in the circle of such persons, in addition to relatives, includes a former spouse; a person engaged to the accused.

The peculiarity of the criminal proceedings of the United States of America is the lack of a single unified national list of persons who have the privilege of a witness. For example, the law of the United States of America pays great attention to the protection of the interests of the accused and his defense counsel (Volosova and Fedorova, 2008).

As noted by T. Loskutova, these privileges are derived from the main privilege of the witness – the privilege against self-blame, and are designed to protect relationships that are trusting, confidential. In granting these privileges, the court may prohibit the disclosure of certain types of information without the consent of the person, but does not prohibit witnessing in court (Loskutova, 2005).

The legislation of other countries has additional guarantees for the protection of various types of secrets. For example, Art. 60 of the Criminal Procedure Code of the Republic of Belarus provides for the possibility to request permission to disclose the circumstances that are the subject of medical secrecy from a person who has applied for medical care, and the position of interrogation of a doctor depends on his position (Code of criminal procedure of the republic of belarus, 1999).

The legislation of foreign states reflects the tendency of the ratio of private and public principles. The privilege of self–incrimination in the law of Great Britain traces the protection of public interests. The interrogation of the suspect and accused under British law is preceded by a warning in the following statements:

> You are accused of committing the following crime. You don't have to say anything. But it can complicate your defense if you don't mention something you expect to refer to later in court. Everything you say can be evidence in the case" (Aparova, 1996: 32).

Meanwhile, a police officer in criminal proceedings in the United Kingdom is allowed, with an appropriate warning about the accused's right to remain silent, to ask clarifying questions or questions aimed at preventing or reducing harm to others (Aparova, 1996). In the United Kingdom, with the consent of the defendant to testify, he is subject to the procedure of questioning a witness. In this case, he is criminally liable for refusing to testify and for giving knowingly false testimony. It should also be noted

here that for refusing to testify, the accused is liable for contempt of court (Kalinovsky, 2000).

As for the police instructions, they clearly stated that the interrogation should be conducted based on a person's guilt, indicating to him that silence may be used against him (Israel *et al.*, 1989). According to Rule 11 of the Federal Criminal Procedure Code of the United States, "if he agrees to testify before a grand jury under oath, the accused must be aware that he may be prosecuted for false testimony". The American legislator proceeds from the fact that "in the course of the trial there is no need to lie in order to protect oneself". In this regard, the state criminal procedure codes provide for liability for false testimony of suspects and accused, while retaining their right to remain silent (Volosova and Fedorova, 2008).

Another position is taken, for example, by the Supreme Court of the Federal Republic of Germany, which points to the possibility of increasing the punishment when the defendant denies guilt, does not want to repent, and realize what he has done, testifies to the hardened criminal, the possibility of future crimes (Gutsenko *et al.*, 2002).

The existing democratic and humanistic principles of protection of human and civil rights and freedoms in the legislation of the United States of America are closely interrelated with the priority of state interests in the fight against crime. A witness who is granted the right to witness immunity may be summoned to court under United States law, but the legislature prohibits his or her from being prosecuted, even if the information provided to him or her contains information about his or her unlawful conduct. According to Art. 6003 of the Federal Rules of Judicial Procedure (Interim and final relief immediately following the commencement of the case), such a person may be summoned for questioning by an attorney representing the state. However, he must obtain the consent of the Minister of Justice and the Attorney General and justify that the information provided by the witness protects the interests of society and the state.

Article 52.05 of the legislation of the state of Texas establishes the bases of the compelled testimony – immunity of witnesses. A person may be required to testify when it is legally recognized that this is necessary for the Commission of Inquiry in the interests of justice. However, a person may refuse to testify on the grounds that he or she is afraid of being prosecuted. In this case, the judge may oblige the person to testify, but by providing a guarantee against criminal prosecution, this reflects the legal nature of the immunity of witnesses.

Witness immunity rules apply to administrative cases and any hearings in the United States Congress. The Congress of the United States of America has the right to apply to the district court for such permission if a person is to be questioned at a congressional hearing. At the same time, the majority of members of Congress must vote in favor.

By providing for a special procedure for the implementation of the provisions of witness immunity, the legislature obliges a person to testify in court, at hearings in Congress and in other cases if the information provided is relevant to society. According to the legal provisions, a person can be obliged to testify only against himself, these rules do not apply to information about relatives. Despite the importance of the precepts of the right not to testify against oneself, there is no unanimity among practitioners and researchers about the appropriateness of the Miranda rules.

These statements are based on a study of public opinion, which in recent years tends to consider the effectiveness of the fight against crime, rather than the question of the development of witness immunity under the rules of Miranda. The problem of expediency of their preservation and application in criminal proceedings remains relevant and open. "Arguments against these provisions are based on two postulates.

The first of them based on the need to protect, first, the interests of justice and citizens. The basis of the second is the need to combat rising crime. These arguments allowed their supporters to persuade the legislator to adopt in 1968 the "Joint Law on Crime Control and Security on the Streets". This is a convincing example of protecting the public interest and creating conditions for it. The Supreme Court of the United States of America joined the solution of this problem, formulating an exception to the rules of Miranda. They are due to the need to protect society from crime and delinquency.

The effectiveness of measures aimed at combating domestic violence is also developed in the criminal procedure legislation of the United States of America. The prohibition on the use of witness privileges makes it possible to combat crimes committed by the accused against members of his family, including minors and minor children. In particular, Art. 38.10 Texas procedural law prohibits a person who has committed a crime against a husband (wife), child or other family member from exercising the privilege of silence (refusal to testify).

The criminal procedure legislation of a number of countries provides for the possibility for the legal representative of a minor to decide whether to testify or to refuse to testify against close relatives and the opportunity to exercise the right to witness immunity. § 52 of the Criminal Procedure Code of Germany provides for the possibility of refusing to testify if minors due to intellectual immaturity or infancy, or persons in custody due to mental illness or mental retardation, do not sufficiently represent the right to refuse to testify. They may be questioned only if they are ready to testify and their legal representative has consented to the questioning. In that case, if the legal representative himself is the accused, he cannot decide on the exercise of the right to refuse to testify. If both parents have the right to legal representation, one of the parents cannot resolve this issue without the consent of the other parent.

It is necessary to note a number of positive factors in the implementation of witness immunity in foreign law: 1) immunity for a witness is an effective mechanism for combating violations of the rights of the accused; 2) immunity for a witness allows to exclude inadmissible evidence in the course of proceedings in a criminal case; 3) immunity for a witness, establishing exceptions in the exercise of the right not to testify against oneself, is an important tool of law enforcement agencies aimed at combating crime.

The study of foreign legislation, law enforcement experience of foreign countries will avoid mistakes in the process of regulation and in the process of law enforcement of witness immunity in Ukraine.

3.2. Features of legal regulation of criminal proceedings against persons with privileges and immunities in the post-Soviet countries

Analyzing the legislation of Georgia, it can be argued that compared to other countries, they have the most severe system of prosecution for violation of any right and evasion of responsibility, as well as "failure to report" or "concealment" of the crime. In Georgia, it can be noted that a person's right not to testify or explain about himself, family members or close relatives is almost non–existent, as "failure to report" or "concealment" of a crime entails criminal liability of 2 to 4 years in prison (Criminal Procedure Code of Georgia, 1999).

In our opinion, this is a violation of a person's right not only to testify or explain about himself or herself, but also about family members or close relatives. After all, if a person refuses to give an explanation or testimony, it may already be grounds for criminal or other liability. Georgian police argue that this makes it possible to solve crimes faster and better.

After all, people who have committed a crime, as a rule, have the right not to testify against themselves, family members or close relatives, which does not allow to quickly solve crimes. In turn, the Constitution of the Republic of Lithuania also provides for the possibility of not giving testimony or explanations about oneself, family members or close relatives. Thus, in Art. 31 of the Constitution stipulates: "it is prohibited to force to testify against oneself, members of one's family or close relatives" (Constitution of the Republic of Lithuania, 1999).

Armenia's criminal procedure law contains a large list of provisions relating to the institution of witness immunity. They are located in various sections, chapters and norms of criminal procedure legislation. A characteristic feature of the criminal procedure legislation of the Republic of Armenia is that the provision of witness immunity is an integral part of the two main principles contained in Art. 19 and 20 of the Code of Criminal Procedure of Armenia – the right of the suspect and accused to protection

and his provision and freedom from testifying, respectively (Criminal Procedure Code of the Republic of Armenia, 1998).

Part 5 of Art. 19 of the Criminal Procedure Code of Armenia prohibits forcing the suspect and accused to testify, present materials to the body conducting the criminal proceedings, or provide him with any assistance. Art. 20 exempts from testifying against oneself, husband (wife) and close relatives. Part 2 of this rule indicates that a person to whom the body conducting the criminal proceedings offers to provide information or provide materials substantiating his guilt, the guilt of his husband (wife) or close relatives in the commission of a crime, has the right to refuse to report bird information and provide materials (Criminal Procedure Code of the Republic of Armenia, 1998).

The legislator notes the special importance of the provisions of witness immunity and therefore considers them not only an integral part of the principle of the right of the suspect and accused to protection and provision, but also an independent principle of criminal procedure law of Armenia.

The right to witness immunity may be exercised by any participant in criminal proceedings. The right not to testify against oneself belongs to the victim, suspect, accused, witness, civil plaintiff and defendant. This conclusion follows from the analysis of the provisions contained in Art. 59, 61, 63, 65, 66 of the Criminal Procedure Code of Armenia and other provisions of the law governing the participation of these persons in criminal proceedings. These rules provide an opportunity to refuse to testify against your husband (wife), as well as to testify against their close relatives. The list of close relatives in the legislation of Armenia is quite large. Close relatives in accordance with paragraph 40 of Art. 6 of the Criminal Procedure Code of Armenia are parents, children, adoptive parents, adopted children, full and half-brothers and sisters, grandfather, grandmother, grandchildren, as well as husband (wife) and parents of husband (wife) (Criminal Procedure Code of the Republic of Armenia, 1998).

The legislator also provided for the category of persons obliged to remain silent. Cannot be called and questioned as witnesses on the basis of Art. 86 of the Criminal Procedure Code of Armenia are the following persons: who due to physical or mental disabilities are not able to correctly perceive and reproduce the circumstances to be established in a criminal case; lawyers to identify information that may be known to them in connection with seeking legal assistance or providing such assistance; who became aware of the information relating to this criminal case, in connection with the participation as a defense counsel, representative of the victim, civil plaintiff, civil defendant in the criminal case; a judge, prosecutor, investigator, investigator and court clerk in connection with a criminal case in which they exercised their procedural powers, except in cases of investigation of errors and abuses committed in the proceedings, reopening of the case

under newly discovered circumstances or restoration of lost proceedings; ordained priest–confessor about the circumstances that became known to him from confession.

Armenian law provides for another type of witness immunity – the privilege of testifying under Art. 448 of the Criminal Procedure Code of Armenia. This privilege extends to diplomatic and consular representatives. These persons are given the privilege not to be interrogated as witnesses and victims, to enjoy the privilege of providing correspondence or other documents related to the performance of their official duties. In addition, the Code of Criminal Procedure of the Republic of Armenia on the basis of and taking into account the rules of international law placed in a separate chapter of the proceedings in the cases of persons enjoying privileges and immunities established by international law and international treaties (Criminal procedure code of the republic of Armenia, 1998).

Analys of the norms of the criminal procedure legislation of the Republic of Armenia allows us to conclude that immunity for a witness extends to the range of persons defined by law, whom the legislator divides into several categories. Immunity for a witness as a privilege extends to participants in the process, as well as their close relatives. The second category consists of persons who are obliged to keep confidential information due to official duty or a special mission assigned to a person (for example, a clergyman). The third group consists of persons enjoying diplomatic immunity and immunities.

The regulation of witness immunity in other countries and in the countries of the former Soviet Union was considered in more detail in the monograph "Regulations on Witness Immunity in Criminal Proceedings in Russia and Foreign Countries" (Volosova, 2011: 39).

Analyzing foreign experience in ensuring the right of a person not to testify against himself, family members and close relatives, it is possible to state a variety of ways to consolidate and implement this right. In almost all countries, it is possible for a person not to testify or explain himself or herself, family members or close relatives. Such an opportunity is provided to a person both in the context of a clearly defined constitutional right and in the context of the relevant guarantees, and in some cases even in the context of an obligation.

The latest legislation in European countries clearly outlines two prospects for the development of the constitutional right of a person not to testify or explain about himself, family members or close relatives. The first is to expand the range of persons endowed with this right. The second trend is to extend the right of a person not to testify or explain about himself, family members or close relatives to other crimes against justice. In particular, the legislation of Lithuania and Poland abolishes criminal

liability for giving false testimony to victims or witnesses if they do so in order to avoid liability of their family members or close relatives.

3.3. Legal regulation of witness immunity in Ukraine and its compliance with international standards

In the theory of criminal procedure law of Ukraine, it is accepted to consider immunity for a witness as a legal institution (Volkotrub, 2005). Thus, in Part 2, Article 4. 65 of the Criminal Procedure Code of Ukraine states which categories of witnesses are endowed with immunity, i.e., are released by law from the obligation to testify. In particular, the following may not be questioned as witnesses: defense counsel, representative of the victim, civil plaintiff, civil defendant, legal entity subject to the proceedings, legal representative of the victim, civil plaintiff in criminal proceedings – the circumstances that became known to them in connection with performing the functions of a representative or defender; lawyers – about information that is a lawyer's secret; notaries – about information that constitutes a notarial secret; medical workers and other persons who, in connection with the performance of professional or official duties, became aware of the disease, medical examination, examination and their results, intimate and family aspects of a person's life – information that is a medical secret; clergy – about the information they received at the confession of the faithful; journalists – about information that contains confidential information of a professional nature, provided that the authorship or source of information is not disclosed; judges and jurors – on the circumstances of discussion in the deliberation room of issues that arose during the court decision, except in cases of criminal proceedings for the adoption of a judge (judges) knowingly unjust sentence, decision; persons who participated in the conclusion and execution of the conciliation agreement in criminal proceedings – on the circumstances that became known to them in connection with the participation in the conclusion and execution of the conciliation agreement; persons to whom security measures have been applied – regarding valid data about their persons; persons who have information about valid data about persons to whom security measures have been applied – regarding these data.

Nor may persons with the right of diplomatic immunity, as well as employees of diplomatic missions, be questioned as witnesses without their consent, without the consent of a representative of the diplomatic mission (Criminal Procedure Code of Ukraine, 2012).

As already mentioned, the Criminal Procedure Code of Ukraine defines the immunity of a witness as the right to refuse to testify in certain cases by law. Such an interpretation could be considered controversial, as the term "witness immunity" has a completely different meaning. Foreign criminal procedure doctrine, considering the experience practiced in the United

States, interprets the institution of witness immunity as exemption from criminal liability and punishment of persons who, under the circumstances specified by law, may be obliged to give so–called self–incriminating testimony (Belkova, 2004). In our opinion, the interpretation of witness immunity as an opportunity to "refuse to testify against oneself" is also controversial from the point of view of the etymology of the word "immunity".

The question of whether the provision on witness immunity extends to the former spouse is relevant for consideration. This issue has been resolved by the legislator in some Western European countries. For example, § 52 of the Criminal Procedure Code of the Federal Republic of Germany stipulates that the right to refuse to testify has the husband (wife) of the accused, even after the divorce (Galagan, 2011). This article also stipulates that a person engaged to an accused has the right to refuse to testify.

We believe that the lack of provisions of paragraph 1 of Part 2 of Art. 65 of the Criminal Procedure Code of Ukraine is that in it the legislator ignored the prohibition of interrogation as a witness of a representative of a third party, whose property is being resolved for arrest.

In accordance with Part 4 of Art. 64-2 of this Code, such a representative may be: a person who has the right to be a defense counsel in criminal proceedings; manager or other person authorized by law or constituent documents, employee of a legal entity by power of attorney – if the owner of the property under arrest is a legal entity. The third person, whose property is being seized, appeals to these persons with a request to ensure the realization of his rights, to take measures aimed at denying or refuting the grounds for the application of special confiscation of property.

The said person must be sure that the information communicated to him will not be used against him. In our opinion, it is necessary to supplement item 1 of h. 2 Art. 65 of the Criminal Procedure Code of Ukraine, a provision that is not subject to interrogation as a witness by a representative of a third party in respect of whose property the issue of arrest is being resolved – the circumstances that became known to him in connection with the function of representative.

Conclusions

1. Thus, witness immunity is a set of rules that exempts certain groups of witnesses from the obligation to testify in criminal proceedings, as well as from the witness's obligation to testify against himself. In this regard, immunity for a witness is divided into two types of imperatives (absolute, unconditional) and dispositive (relative,

conditional). Witness immunity is an important institution that ensures principles such as the presumption of innocence and the protection of human and civil rights and freedoms in criminal proceedings, so it is necessary to eliminate problems, gaps and improve existing legislation governing this institution.

2. Ensuring the constitutional right of a person not to testify or explain about himself, family members or close relatives is a specific socially necessary and legally regulated activity of public authorities and their officials, aimed at creating appropriate conditions for implementation, protection, defense and restoration of this right of persons who are in the status of a victim, suspect, accused, defendant, plaintiff, defendant, applicant, debtor, witness or other subjects of procedural relations.
3. The system of normativelegal sources of the right of a person not to give testimony or explanations about himself, family members or close relatives consists of: international legal acts, the Constitution of Ukraine; sectoral legislation, case law in this area.
4. The study of foreign legislation revealed the following patterns in the development of the institution of witness immunity in the Anglo-Saxon and Romano-Germanic legislation:
    a) AngloSaxon law proposed the division of witness immunity into two independent institutions – the immunity of witnesses and witnesses of privileges. Under most law, witness privileges extend to the accused and his or her relatives. With regard to witness immunity, its provisions apply to other persons involved in criminal proceedings.
    b) RomanoGermanic law (legislation of Germany, France, Belarus, Armenia, Georgia) is characterized by a clear definition of the category of persons entitled to witness immunity, which distinguishes these provisions from the provisions of US law, in which the list of such persons is the prerogative of only federal law, but more the prerogative of state law.
    c) under the legislation of the studied countries, the violation of the right not to testify related to the voluntary testimony, which in turn is correlated with the admissibility of evidence.
5. In order to properly resolve the issue of problematic aspects of the institution of witness immunity, it is reasonable to supplement paragraph 1, part 2 of Art. 65 of the Criminal Procedure Code of Ukraine, a provision that is not subject to interrogation as a witness by a representative of a third party in respect of whose property the issue of arrest is being resolved – the circumstances that became known to him in connection with the function of representative.

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Use of electronic forms of direct democracy: international experience and perspective ukrainians

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Abstract

The international experience in standardizing the implementation of e-democracy is studied. Thanks to a set of methodological approaches (synergistic, complex, humanistic) and methods of scientific knowledge of social phenomena and processes se identify the prospects for the introduction of direct e-democracy in modern Ukraine and propose priority measures for the implementation of state policy in the field of training and development of e-democracy, based on modern management technologies. It is concluded that, as a form of realization of rights, e-democracy should be considered as an alternative to traditionally recognized methods and practices of law enforcement, and the purpose of its implementation is to promote the expansion of opportunities for the realization of citizens' rights. It also emphasizes that the idea of digitalization of the state must be balanced with the awareness of the practical usefulness of the model, its instrumental importance for the achievement of sustainable development goals and its progress, considering existing and potential risks.

Keywords: democracy; e-democracy; e-government; e-voting; petition.

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Uso de formas electrónicas de democracia directa: experiencia internacional y perspectiva Ucranianas

Resumen

Se estudia la experiencia internacional en la estandarización de la implementación de la democracia electrónica. Gracias a un conjunto de enfoques metodológicos (sinérgicos, complejos, humanísticos) y métodos de conocimiento científico de los fenómenos y procesos sociales se identifican las perspectivas para la introducción de la democracia electrónica directa en la Ucrania moderna y se proponen medidas prioritarias para la implementación de la política estatal en el campo de la formación y el desarrollo de la democracia electrónica, basadas en tecnologías de gestión modernas. Se concluye que, como forma de realización de los derechos, la e-democracia debe ser considerada como una alternativa a los métodos y prácticas de aplicación de la ley tradicionalmente reconocidos, y el propósito de su implementación es promover la expansión de oportunidades para la realización de los derechos de los ciudadanos. También. se enfatiza que la idea de digitalización del estado debe equilibrarse con la conciencia de la utilidad práctica del modelo, su importancia instrumental para el logro de las metas de desarrollo sostenible y su progreso, teniendo en cuenta los riesgos existentes y potenciales.

Palabras clave: democracia; e-democracia; e-gobierno; e-vote; petición.

Introduction

The right of the people as the bearer of sovereignty and the only source of power in Ukraine to directly exercise power is guaranteed by the Constitution (Article 5 Part 2) (Constitution Of Ukraine, 1996). It is known that the issue of democracy is complex and multifaceted, one of the aspects of which is the introduction of digitalization and the introduction of electronic means in public life. The dynamics of life requires the use of digital technologies in the activities of public authorities and local governments, to implement projects such as «e-government», «digitalization of society», «state in a smartphone», «e-government», «digitalization of administrative services» and more. Without digitalization and the tools of direct democracy in modern conditions, it is impossible to do without the knowledge of real rather than imaginary needs and demands, thoughts and feelings of the population, as well as the collective, solidary mind of the people.

More and more countries around the world are implementing e-democracy tools to shape new policies based on citizens-government relations based on transparency and full trust between the two sides. World

leaders in the development of e-democracy have been able to reach a level where all instruments are a single effective communication system that strengthens and promotes the most effective bilateral dialogue between government and society. The experience of e-democracy development in these countries should be studied and applied taking into account national specifics for Ukraine as well.

Prospects for expanding the range of applications and, consequently, increasing the availability of direct democracy procedures through the use of information technology are determined primarily by: the need to create conditions for systematic public involvement in public administration and solve all pressing problems; the need to direct public initiatives in the plane of constructive interaction with the state; requirements for ensuring openness and transparency in the activities of the management staff. In addition, awareness of one's own involvement in state-building processes will certainly contribute to the development of an active civil position as one of the main conditions for the formation of a capable civil society.

It should be emphasized that in Ukraine the development of e-democracy and e-government has been identified as one of the priorities of the Strategy of State Policy to Promote Civil Society Development in the Context of Optimizing Social Dialogue Mechanisms and Institutions of Direct Democracy (Presidential Decree, № 212/2012). However, the study of foreign experience in building models of e-democracy for its use in practice is relevant.

1. Methodology of the study

The research methodology of the article is based on a set of methodological approaches and methods of scientific knowledge of social phenomena and processes. The synergetic approach helps to predict possible fluctuations and vectors of development, taking into account different social and technical processes of influence on e-government; comprehensive – provides an analysis of the subject of research and provides opportunities to develop common standards, standards, principles and general rules of legal regulation; humanistic – normalizes the manifestations of coercion in the construction of the constitutional order and human values in the theory of constitutionalism in the formation and functioning of e-government. A set of methods was used, including: dialectical - in the analysis of the phenomenon through its normative-legal and law-enforcement genesis; hermeneutic - in the interpretation of regulations, proposals for improving the conceptual and categorical apparatus; transcendental - to reflect the dominance of the primacy of human interests in the functioning of e-democracy; constitutional comparative studies – in isolating a group of

states according to the level of technology implementation, which makes it possible to reflect the relationship between e-government and democratic government; legal forecasting – to determine the prospects for further development of the constitutional law of Ukraine in the modern conditions of constitutionalism, to identify areas for the development of e-democracy; legal and statistical – in reflecting the effectiveness of national government on various criteria, including national indicators, statistics of other countries used for comparison.

2. Analysis of recent research

Forms of democracy related to e-democracy and digitalization of public relations have become the subject of interest over the past few years M. Castells (Castells, 2004), S. Dzyuba (Dzyuba, 2012), N. Hrytsyak (Hrytsyak, 2015), N. Jincharadze (Jincharadze, 2012), R. Lindner (Lindner, 2020), V. Pogorilko (Pogorilko, 2010), O. Romanchuk (Romanchuk, 2020), S. Solovyov, V. Danilenko (Solovyov and Danilenko, 2012), J. Tomkova, D. Hutkii (Tomkova and Hutkii, 2017) and others. However, most studies reveal either theoretical aspects or criticize and identify shortcomings in the process of implementing e-democracy. There is very little objective, comprehensive work on the introduction of e-democracy in Ukraine. It is these circumstances that determined the choice of the topic of the scientific article, object, subject and purpose of the study.

The presence of a variety of recommendations for improving legal regulation requires a certain theoretical and methodological generalization to define the concept of «e-democracy», areas of solving legal problems of its development, which given the importance of e-democracy tools for the current stage of development of Ukraine is important.

The aim of the article is to develop practical recommendations for clarifying approaches to the formation and implementation of state policy of Ukraine in the field of formation and development of e-democracy, which would be based on current constitutional principles, take into account global recommendations in this area and use modern management technologies.

3. Results and discussion

Democracy is the main value of the international community, supporting democracy, humanity promotes human rights, development, peace and security. Democracy promotes good governance, monitors elections, supports civil society to strengthen democratic institutions and accountability, ensures self-determination in decolonized countries, and

assists in the development of new constitutions in post-conflict countries. The basis of democracy for the legal status of the individual is pointed out by the European Court of Human Rights, where paragraph 47 of the judgment states that fundamental human rights and freedoms are best supported by «effective political democracy» (Mathieu Mohin And Clerfayt V Belgium, 1987).

The UN, in its 2005 World Summit Outcome, states that democracy is a universal value based on the free will of the people, who determine their political, economic, social and cultural systems, and on their active participation in addressing all aspects of the issue. his life (UN General Assembly, 2005). Thus, the world community emphasizes the sovereign right of the people of each state to participate in the decision-making process on any issues concerning their lives.

According to the IDEA (Intergovernmental International Institute for Democracy and Electoral Assistance):

> In recent years there has been a transformation of civic space caused by the use of information and communication technology, which is the transformation of political parties and the transition to individualization of civic activity. it is often established through networks and social media (The Global State Of Democracy 2019 Addressing The Ills, Reviving The Promise).

Today, e-democracy tools provide many new channels for community-to-government feedback. They also allow the justification of decisions from the government to the community. This new circumstance for Ukraine poses new challenges to communication between government and society (Shiyan, 2019). Electronic technologies allow the development of democratic procedures, their importance is that they can be communicative, not just informative. Therefore, the democratization of government institutions, the possibility of increasing the participation of citizens at every stage of government relations contributes to the democratization of the state.

Leading scholars argue that electronic technology has a positive effect on democratic procedures. First, expanding, if not strengthening, political democracy, where such democracy already exists, in terms of technologies that provide citizens with access to information and the ability to communicate, helps to restore some government responsibility to its people that has been blurred or diminished by markets and globalization. Similarly, if not the weakening of authoritarian regimes where democracy does not exist, the same technology also helps to restore or create some accountability of the government to its people, because in a globalized world where citizens are aware of the reality in other countries, even authoritarian regimes ultimately are responsible if only to support themselves.

Second, globalization technologies, which empower citizens through the dissemination of information and communication, contribute to political mobilization when the effects of markets and globalization cross the threshold of tolerance in countries where democracy exists in some form. In fact, such empowerment provides checks and balances that work through the democratic political process to impose restrictions or adjustments. Similarly, in countries with authoritarian regimes, citizens with much greater access to information and communication are able to articulate a political voice on issues where they are affected by outcomes that may be related to markets and globalization (Nayyar, 2015).

In each country, democratic and human values, as well as ethical considerations, are integral parts of the technological aspects of e-democracy, driven by the demands of democracy, not technology. At the same time, e-democracy does not promote any specific type of democracy and in the near future will become an integral part of the public administration system, in connection with which the authorities must do everything possible to increase public confidence in government.

Another positive of the electronic means of democracy is its universality, namely the ability of a wide range of electoral participants to participate in elections and other forms of public participation. Proponents of e-democracy argue that this form is not just a matter of convenience: since e-voting is not just a logical extension of everyday transactions and Internet applications in the economy and government, but a way of exercising political law, deeply embedded in democratic traditions and constitutions, its introduction and acceptability depend on its ability to respect, defend principles, and promote principles related to this most defining component of democracy (Mitrou *et al.*, 2003).

In recent decades, neologisms such as e-society, e-economics, e-medicine, and many others have become widespread, which are figurative and capacious reflections of the widespread impact of information technology on human activity (Stoneyer, 1986). Then came the derivatives of these neologisms: «e-government», «e-customs», «e-doctor», «e-business», «e-commerce», including «e-democracy» (Declaration of Principles, 2003; Castells, 2004). Undoubtedly, a powerful catalyst for the use of these neologisms is the extremely wide spread of the idea of the information society.

The formulation of the definition of the term «e-democracy» needs appropriate prior explanation.

The Strategy for the Development of the Information Society in Ukraine defines e-democracy (e-democracy) as «a form of public relations in which citizens and organizations are involved in state-building and public administration, as well as local self-government through the widespread

use of information and communication technologies» (On Approval Of The Information Society Development Strategy In Ukraine, 2013).

E-democracy as a component of the social institution of democracy in the modern information society contributes to the realization of its functions: the functions of reproduction at a new level of social relations (relations «citizens – power» are organized taking into account new digital technologies). enriches with new forms and filling); regulatory function, which is expressed in providing citizens with resources and authority to participate in politics, overcoming «information inequality», prosecution for offenses committed in the use of e-democracy tools (Tomkova, Quick); integrative function (reduction of social distance between government and citizens, consolidation and coordination of resources, efforts and actions of public authorities, citizens and business) (LAW OF UKRAINE «ON APPROVAL OF THE CONCEPT OF E-DEMOCRACY IN UKRAINE AND ACTION PLAN FOR ITS IMPLEMENTATION»). Its feature is the bilateral usefulness for the subjects of the political-constitutional process. For citizens, it consists in the possibility of real participation in the activities of public authorities, and for the subjects of power relations - in the possibility of obtaining real public opinion.

In general, we share the position of scholars who note that:

> E-democracy is an innovation that not only allows to adapt democratic procedures to the requirements of modern society in form, but also brings new meaning to the institution as a whole. This concerns, first of all, bringing the objects of power closer to its subject, removing unjustified barriers between them, and, consequently, bringing the relations between the authorities and citizens, which are the essence of democracy, to a new level, expanding opportunities to strengthen civil society (Savka and Mishok, 2018).

It seems that the positions of various foreign scholars largely coincide in the fact that they believe that the close connection between the development of direct democracy, in particular e-democracy, and increasing the level of responsibility of the state and its bodies to society, which determines the discourse, in particular, and in the field of constitutional and legal research of the phenomenon of legal responsibility of the state. Thus, the practical value of creating a complete mechanism of constitutional and legal regulation of direct democracy in modern Ukraine is objectively growing.

It is believed that it is «e-democracy» with the full range of modern tools that use technology, creates the basis for the effective implementation of a large number of different traditional types of direct democracy, including elections, referendums, public opinion polls, plebiscites, public debates, popular initiatives, petitions (collective written appeals), meetings, etc. (Pogorilko, 2010) forums on websites, electronic public opinion polls,

etc. These e-democracy tools, both traditional and new, under certain conditions help to involve the maximum number of people in the decision-making process to whom these decisions can directly affect. Thus, the harmonious combination of various tools of e-democracy as certain forms of direct democracy and forms of traditional representative democracy makes it possible to minimize certain shortcomings of the latter.

The advantages of e-democracy are as follows: a significant reduction in the cost of democratic procedures; reducing the cost of interactive forms of interaction with citizens, which allows public authorities to take more fully into account the views of different social groups in decision-making; involving citizens in decision-making at an earlier stage and in a closer form; involvement of social groups of citizens with disabilities, who find it difficult to ensure their public rights through «traditional» forms of democratic participation; strengthening citizens 'trust in the state due to the image functions of new communication channels, creating the illusion of citizens' participation in decision-making (Dzyuba, 2012).

E-democracy is the involvement of citizens in the process of making and making government decisions. A special form of democracy that has formed in the information society and uses modern information and communication technologies. Its essence is that due to the well-established system of electronic communications, all citizens of the country are involved in the government decision-making process, and the process itself turns into a bilateral dialogue between government and citizens, where each party has full confidence in each other. accessibility and transparency.

From a scientific and methodological point of view, e-democracy is a unique legal phenomenon – sui generis, which can be studied using comprehensive interdisciplinary tools – the theory of constitutional law, general legal hermeneutics, systems theory, cybernetic analysis, political engineering, and more. As experts aptly point out: «Internet democracy is a way to raise the question of democracy again /... / Technical solutions reveal the fact that» digitalization «raises the question of a kind of re-establishment of democracy or modernization of democracy» (Center for Modernization Decisions. How to modernize democracy: challenges and prospects of e-democracy). The complex, hybrid nature of this legal phenomenon determines the integrated scientific approach to master the specifics of the emergence and implementation of constitutional rights of citizens arising from the use of information technology in political and legal reality.

Thus, given the analyzed definitions of the term's "democracy" and "e-democracy", we propose the following definition: e-democracy is a democracy for which significantly increases the effectiveness of democratic institutions, democratic processes and the spread of democratic values, using various tools based on computer technology.

Effective implementation of e-democracy requires appropriate conditions: active provision of balanced and objective information that will help the public to clearly understand the problems, alternatives, opportunities and / or solutions to democratic problems, which is closely related to freedom of information and freedom of speech; broad understanding of citizens who live permanently and are integrated into the political reality, regardless of nationality; involvement of citizens, corporations, associations and non-profit organizations in democratic processes; support for civil rights and the provision of resources for participation in democratic processes; developing skills, available and available tools and a combination of electronic and non-electronic approaches.

Modern international experience shows that e-democracy is the most effective type of government, which can take different forms in different countries depending on political and constitutional traditions and which guarantees the effective reform of the state and society, which is extremely important in general. for Ukraine and for each individual. Many countries around the world are making significant efforts to improve the system of democracy, in particular through the use of information technology technologies.

The world and European practice of involving the public in the political process with the help of information technologies is quite diverse. There are a number of successful examples of the introduction of elements of e-democracy in the country's political life. Let's analyze foreign practices in the implementation of various forms of electronic democracy, the geography of which proves the feasibility of these experiments, and the fact that it is in such schemes hidden the future of democratic political systems (Isaev, 2008).

According to the peculiarities of application, the following are distinguished: – American model of e-government. Operates in the USA and Canada. Provides for: simplification and reduction of public contacts with the authorities; establishing direct communication with government agencies; – European model (Western, Central, Eastern Europe). Characteristic features – functioning in the conditions of supranational structures: The European Parliament, the European Commission, the European Court. The obligation to implement the decisions of these institutions by the member states of the European Union leaves its mark on e-government, which is to level the playing field and coordinate the work of government; – The Asian model is implemented based on the peculiarities of governance in the East – a strict hierarchy, compliance with corporate rules of communicative behavior. This model, introduced in South Korea, is marked, for example, by the wide access of the population to information resources, as well as the introduction of information technology in the fields of education and culture.

Among the simplest forms of e-democracy, which is gradually being introduced in different countries around the world, we can single out the organization of Internet voting in elections and referendums.

The simplest indirect form of e-democracy is online voting. This is the simplest way, which requires only purely technical solutions: voter identification; security of data protocols; monitoring the voting process. A similar experiment was conducted in the UK in 2002-2003 by a parliamentary group on e-democracy. Not only the election commission but also the largest academic institutions took part in this experiment. In two major cities, Sheffield, and St. Albans, respectively, three and two polling stations provided voters with the opportunity to vote online. A similar experiment was conducted in Bologna, Italy, in January-February 2002, when a structured online debate system was created as part of the Demos project. Similar experiments were also conducted in other Italian cities at the level of self-government bodies (Hrytsyak, 2015).

The European Court of Human Rights in Liberal Party, Mrs R. and Mr P. v. The United Kingdom has determined that «any electoral law must be seen in the light of the political evolution of the State concerned, since certain features which cannot be considered acceptable in the context of one system may be justified in the context of another», which must states the state to adhere to the 107 fundamental principle of Article 3 – the principle of «free expression of people's views when choosing a legislature» (Liberal Party, Mrs R. And Mr P. V. United Kingdom, 1980).

An unconditional advantage of electronic voting systems is the facilitation of access to the procedure of expression of will for persons with disabilities and the general efficiency of obtaining its results. At the same time, remote online voting using direct electronic registration causes problems with voter identification and the need to protect the secrecy of the ballot. As a result, in many developed countries with a high degree of penetration of Internet technologies (Germany, Italy, Spain, Ireland) the implementation of full-scale programs for the introduction of electronic voting has been postponed.

At the same time, the practice of addressing the public not only as an instance of approval / disapproval of certain political decisions, but also as an equal partner of the state in the development of public policy is becoming more widespread. In the countries with the largest Internet audience, examples of the use of such skilled participation of active citizens were the most successful:

- In Iceland (97.8 % of the country's residents are Internet users; during the discussion of the draft Constitution on social networks, the website of the Constitutional Council received 3,600 comments and more than 300 official proposals, after which the draft Basic

Law of the state was submitted to parliament and public).

- In New Zealand (during the revision of the law on public police in 2007, a wiki version of the new bill was presented to the public, which could be amended by any citizen; 234 proposals were received and taken into account; according to experts, citizen participation was one of the key aspects in the process of drafting the law);
- In Estonia, electronic voting has been used since 2005 in local elections, and since 2007 in parliamentary elections. If in 2005 only 2 % of Estonian voters voted in this way, in the 2011 parliamentary elections this figure reached 24 % (Electronic Democracy: Citizens and Government).
- In the UK, Prime Minister D. Cameron launched the Big Society initiative in 2010 to increase the involvement of citizens and non-governmental organizations in addressing social issues, involving as many people as possible in the adoption of important issues. public decisions, since the end of 2010 there is an official government website of the initiative, where anyone can leave comments, links and videos related to the idea of «Great Society» (Dorodeyko, 2011).
- According to the Norwegian Local Government Act, citizens have the right to submit proposals (public initiative) to the council. In 2013, the Ministry of Local Self-Government initiated the creation of a relevant website and introduced a system for submitting local e-petitions. Today, residents of the municipality can publish their proposals on the website, and citizens can sign them in support (Reinsalu, 2010).
- Poland has adopted a law on special rules for the conduct of general elections of the President of Poland regarding the provision of presidential elections exclusively by voting by mail (Opinion On The Draft Act On Special Rules For Conducting The General Election Of The President Of The Republic Of Poland, 2020).

At the same time, foreign experience shows that e-democracy can violate established constitutional values. Let's turn to the experience of foreign countries. The German Constitutional Court has ruled that any form of electronic voting is unconstitutional for a number of reasons: voters have to blindly trust technology, they have no way of actually knowing how computers count their votes, and any electronic or new system should be as clear and usable by a layman as the system it replaces (pen and paper for a physical ballot). This, in fact, makes it impossible to introduce any new e-voting system in Germany at current levels (The Federal Constitutional Court. Judgment Of The Second Senate, 2009).

According to a UN study, New Zealand and Japan are among the leaders in the development of e-democracy. These countries have managed to effectively develop the tools of democracy such as citizen information, e-voting and consultation, the parliament, the petitions system, etc., and to establish two-way communication between governments and citizens. In New Zealand, an e-parliament website has been set up where parliamentarians pass laws, discuss important issues and monitor the Government's activities. The site presents the personal pages of all members of parliament. These pages have all their contact details, as well as links to their pages on social networks. The e-Parliament portal also provides for the submission of electronic petitions by citizens (RECOMMENDATION CM / REC, 2009).

Japan is one of the three world leaders in the development of e-democracy tools. As in New Zealand, the country has an online government system, which is also characterized by its openness and accessibility to all citizens, convenient and easy-to-use technologies, through which public-government dialogue brings effective results, important for the development of the whole country (Solovyov and Danylenko, 2012).

U.S. experts point out that in the last decade there have been numerous high-profile cases of attacks on Internet portals, as well as virus infections that have blocked the websites of government agencies and large corporations. Given the high stakes in the election, it is reasonable to assume that criminals – especially in countries with specific geopolitical opponents – may specifically create and deploy attacks and / or malware designed to manipulate the vote. Expert reports show that while e-voting systems have improved, federal and state governments have not committed to the widespread use of e-voting in future elections. More funding, research and civic education (Office Of Management And Budget. E-Government Strategy, 2002) are needed to apply such a vote.

Paragraph 4 of Resolution 290 (2009) «E-Democracy: Opportunities and Risks for Local Authorities» indicates that there are no clear or common models to be adopted, but important lessons for its implementation have already been learned and there are clear principles to be applied (Resolution 290 E-Democracy, 2009). Thus, this proves the basic principle of the legal essence of electronic voting – it must meet defined, tested and approved by the international community standards reflected in the principles of suffrage as a system of basic provisions common to the legal regulation not of individual types of elections but of all political elections (Romanchuk, 2020).

Although parliaments and society are deeply interested and enthusiastic about using information technology to improve dialogue with citizens, many challenges remain. Parliaments have succeeded in using information technology to disseminate information to the public, but only a few truly

interactive parliamentary websites are available today. Deputies, parliament and political parties still use web pages mainly as a way of monologue.

Foreign experience also makes it possible to state that legislative procedures and regulations are not effective without comprehensive support and systemic guarantees. Important at the stage of introduction of electronic voting is the introduction of another principle - legal certainty, which requires regulatory regulation of the procedure in accordance with the latest technical standards. The introduction of this type of voting is inadmissible if constitutional norms prohibit such a form, such as Art. 26 of the Austrian Constitution, so electronic voting can be introduced only after amendments to the Constitution.

The principle of legal certainty provides for the introduction of electronic procedures without a radical change in the democratic foundations. In most countries, as in Ukraine, the current election law does not provide for electronic voting, so new legislation needs to be developed. This new legislation may provide for three different forms: an interim law allowing experiments with electronic voting; change of the current election law or implementation in the existing legislation; temporary law on electronic voting with further changes in suffrage (Romanchuk, 2020). International standards (in particular, the Venice Commission in its reports) state that electronic voting does not violate political human rights and can take place subject to the general constitutional requirements of democracy (VERFASSUNGSGERICHTSHOF. DECISION V 85-96 / 11-15, 2011).

The above leads to the conclusion that e-democracy implies a gradual implementation process. In our opinion, such technology should be tested at different levels, implemented gradually and with a reasoned analysis of specialists, experts.

Among the important tasks of Ukraine on the way to the European community is the development of the information society. The Institute of Electronic Democracy has begun its implementation in Ukraine, and the rapid development of electronic democracy in Ukraine is recognized by the UN: since 2015, our country has significantly increased its position in the ranking of e-democracy and now ranks 32nd (Makhnachova, 2018).

The formation of the legal framework for the functioning of e-democracy began in 2003, when the laws «On electronic documents and electronic document management» and «On electronic digital signature» were adopted (Klymchuk *et al.*, 2021). The preconditions for the formation of e-democracy in Ukraine were the expansion of public access to the Internet and the intensive development of the IT sector. Civil society takes an active part in the formation of e-democracy in Ukraine (Makhnachova, 2018).

Regulatory framework that defines the basic principles and practical mechanisms for implementing information technology in state and public

life: the Law of Ukraine «On Basic Principles of Information Society Development in Ukraine for 2007-2015», Strategy for Information Society Development in Ukraine, Action Plan for Implementation in Ukraine Open Government Partnership Initiative, Action Plan for Implementation of the Open Government Partnership Initiative. Some aspects of the dissemination of information and computer technologies are regulated by the Strategy of State Policy to Promote the Development of Civil Society in Ukraine.

On May 15, 2013, the Cabinet of Ministers of Ukraine adopted the Order «On Approval of the Information Society Development Strategy in Ukraine», which provided for the main directions of e-democracy, namely: improving the regulatory framework, using new technologies, forming a culture of communication, creating «Electronic Parliament» new projects, etc. (On Approval Of The Information Society Development Strategy In Ukraine, 2013).

The key legal act that today defines the directions of e-democracy development in Ukraine is the Concept of e-government development in Ukraine, approved by the Cabinet of Ministers of Ukraine. This document sets out the key goals, priorities and measures for the development of e-government in the coming years. The President of Ukraine, the Cabinet of Ministers of Ukraine and the entire system of executive bodies, as well as local self-government bodies are involved in the implementation of the e-democracy program in Ukraine.

According to the Concept, the formation of political, organizational, technological and ideological conditions for the development of e-democracy in Ukraine is envisaged, which is characterized by the growth of a wide involvement of citizens municipal right to communication, cooperation with state authorities, control over them, participation in policy-making, development of self-organization and self-government, as well as the level of trust in the subjects of power; harmonization of state policy standards in this area with international, in particular European standards.

It is necessary to introduce electronic voting, as well as electronic election process, electronic referendums and electronic plebiscites; ensuring the institutionalization of e-democracy tools; wide involvement of individuals and legal entities in the development and use of e-democracy (Law of ukraine «on approval of the concept of e-democracy in ukraine and the action plan for its implementation»). The Concept also stipulates that the «most common tools» of e-democracy used today in Ukraine at both the national and local levels are e-consultations, e-petitions, e-appeals, participation budgets (public budgets). Resources have also been created for the publication of datasets in the form of open data, including through electronic platforms such as Civil Society and Government, Smart City or the Single System of Local Petitions, which combine several electronic tools for participation (Law Of Ukraine On Approval Of The Concept Of

Development Of Electronic Democracy In Ukraine And Action Plan For Its Implementation, 2017).

Different cities of Ukraine have started to implement various tools of e-democracy: e-appeals, e-petitions, e-discussions, e-procurement, e-budgets, e-public budgets (participation). Some cities create different services on their own, such as e-petitions, electronic queues for kindergartens or open data portals, while others use electronic platforms, such as the «Single Local Petition System» or «Smart City», which combine several e-petitions. -institution tools. The choice of the model of e-democracy in cities is entrusted directly to local governments and active citizens (Loboyko and Nakhod, 2017).

The e-parliament tool is actively working in Ukraine (citizens can get acquainted with the texts of Ukrainian legal acts, as well as provided access for deputies to all documents on the agenda of the plenary session on mobile devices by creating an application), e-justice, e-consultations. Electronic petitions are among the most important tools of e-democracy in Ukraine. The legislative basis for their introduction was the introduction in 2015 of amendments to the Law of Ukraine «On Citizens' Appeals» concerning electronic appeals and electronic petitions.

Another effective tool for e-democracy is public participation budgets, through which citizens can determine what needs to be spent on. ProZorro's public procurement control systems have become one of the most effective Ukrainian reforms in recent years (Makhnachova, 2018).

A number of regional projects of interactive electronic interaction with the public are being implemented. In particular, the first region of Ukraine where the e-government system was successfully implemented was Dnipropetrovsk region (Dnipropetrovsk region is a leader in innovation management in Ukraine). In May 2013, the Internet portal «Dialogue for Reforms: Implementation of Socio-Economic Reforms in Luhansk Region» was launched. The portal operates in two main areas: as an information database on socio-economic reforms and their implementation in Luhansk region; as a communication «platform» for discussing reforms. Each user of the portal has access to a database of reforms, can leave their suggestions and comments, as well as receive up-to-date information on the implementation of reforms. In September 2013, the first Regional Center for e-Government Development in Ukraine was opened in the Autonomous Republic of Crimea (e-Democracy: for the first time in Ukraine, 2008).

A relatively new institution in the systematization of national forms of direct democracy, institutionalized in Ukraine, is the institution of electronic petitions. It was introduced by the Law of Ukraine «On Amendments to the Law of Ukraine» On Citizens' Appeals «Concerning Electronic Appeals and Electronic Petitions» of July 2, 2015. According to it, citizens can apply to

the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, local governments with electronic petitions through the official website of the body to which it is addressed, or the website of a public association that collects signatures in support e-petition. In fact, this law has provided ample opportunities for the introduction of e-democracy in Ukraine.

At the same time, it is not without some systemic shortcomings that complicate the implementation of this form of direct democracy. Thus, the Law gives the right to submit electronic petitions only to citizens of Ukraine, while according to Art. 40 of the Constitution of Ukraine, all (not only citizens of Ukraine) have the right to send individual or collective appeals to the relevant authorities. At the same time, a significant shortcoming of the Law is the lack of a mechanism for verifying the signatures of citizens in support of the electronic petition and determining the legality of the vote cast in its support. Establishing a sufficiently high «threshold» for a special procedure for consideration of electronic petitions by higher state authorities minimizes the influence of citizens on public policy-making, while all other petitions are considered according to the algorithm of consideration of ordinary citizens' appeals.

At the same time, it should be noted that the tools of real influence of the population on the formation and implementation of government decisions with the help of information technology are currently extremely limited.

It should be noted that Recommendation 17 points to the need to «amend the legislation to allow the Central Election Commission to implement pilot projects and test new voting technologies both in a safe environment and in real elections; the government should provide funding for such activities at the appropriate level. The introduction of new technologies into the election process should be preceded by extensive consultations and information campaigns, as well as independent feasibility studies» (Recommendations from the results of the national conference: «presidential and parliamentary elections of 2019 in Ukraine», 2020).

The possibility of electronic voting in Ukraine is currently lacking both in terms of legal support and in terms of organizational and technical feasibility. The organization of electronic elections requires the development of special software and hardware that will guarantee protection from hacker attacks and reliable identification of citizens in order to prevent the interference of interested parties in the voting process. The development and implementation of e-voting can be a key tool in e-democracy to help ensure the accuracy and transparency of elections, free access to voting information, and free participation of citizens who for some reason cannot be present at polling stations. One of the important problems hindering the active development of e-democracy is the uneven coverage of the Internet.

In our opinion, the factors hindering the formation of e-democracy in Ukraine are the low level of user interest in e-interaction with public authorities, lack of competence in e-democracy, low rates of e-interaction between government and citizens, ignorance and indifference of the population regarding opportunities for the use of information technology for communication with the authorities cause an unsatisfactory level of implementation of e-democracy in Ukraine.

The introduction of Ukraine's e-justice system, although noted by politicians and government officials as an important task of judicial reform, has been rather slow. Although the share of electronic information systems in litigation is gradually increasing, electronic communication between the parties to the proceedings is almost non-existent, and remote litigation is more the exception than the rule.

There are significant problems with the format of data exchange, protection of information processed in the judicial system. Electronic document management is used only in parallel with traditional paper. International, in particular, European experience in the development of e-justice is insufficiently studied and applied. Implementation of e-justice projects is carried out separately, without a single system, with insufficient funding (Semenchenko and Dereshpak, 2017).

Despite the achievements of recent years, it is worth pointing out the factors that slow down the development of e-democracy in Ukraine: - failure to obtain terms and conditions for the introduction of information technology in public administration, provided by the relevant plans and target programs; inconvenience in the use of many government web resources (especially interactive services), their lack of functionality and low efficiency of updating; preservation of regional disparities in the spread of information technology ("digital inequality"); low general level of information and computer literacy of government officials (Voznyuk, 2014).

Agreeing with many scholars on the prospects of e-democracy, we can state the following systemic barriers to its spread in Ukraine: uncertainty of public policy in the field of e-democracy, as well as promising ways to implement it; imperfection of legal support in the field of e-democracy, first of all, imperfection of the system of normative-legal regulation; low level of involvement of civil society actors in the processes of improving public policy in the field of e-democracy, as well as in the implementation of its individual tools; insufficient level of information infrastructure development, inequality of access to the Internet and information computer technologies as the main conditions for ensuring the development of e-democracy; low level of public awareness about the content and features of the use of various tools of e-democracy, as well as methods and aids to their application; lack of motivational levers, the level of knowledge and skills of civil servants, local government officials, citizens on the development of e-democracy.

Among the set of these main problems, of course, the problem of improving the legal regulation of social relations in the implementation of democratic processes in the use of information technology is extremely important (Baranov, 2017).

Thus, even though Ukrainian citizens can already use many tools of e-democracy, the transition from a one-sided format to real communication between government and society is now underway. We believe that a necessary step to enhance e-democracy is to increase the electronic literacy of citizens, especially the elderly. This step involves the introduction of free programs and courses to familiarize people with the possibilities of using information technology to communicate with the authorities and influence government decision-making. However, to overcome obstacles to the development of e-democracy, support for this area by government bodies and authorities is of paramount importance.

Scholars suggest ways to improve legislation in the field of e-democracy:

- Disseminate new additional platforms, online libraries, archives and information digests, group news and web rooms for expert discussions, electronic mechanisms for summarizing the results of discussions (Hrytsyak, 2017) to establish political and legal communication, dominance of electronic forms of interaction between authorities' public authorities at various levels and the public.
- Intensify public discussions and debates of legal and political spheres in order to develop the constitutional principles of interaction between the state and civil society (for example, N. Dzhincharadze proposes to introduce the practice of interactive participation of citizens in local council meetings.
- To introduce an electronic form of legislative initiatives to public authorities, generalization and implementation of proposals and requirements of citizens in the regulatory sphere.
- To increase the level of technical and e-education by mastering the electronic mechanisms of e-democracy of public officials and ordinary citizens.
- Implement measures to implement protection of the e-government mechanism from external influences, cyberattacks, technical errors, etc. (Romanchuk, 2020).

In general, we state that the active introduction of information technology in the system of socio-political relations significantly expands the opportunities of citizens to participate in joint affairs, creates conditions for the formation of a qualitatively new level of activity of citizens who use modern electronic technologies not only for personal but also goals

of socio-political participation at all levels of public administration. In the constitutional and legal field of Ukraine there are no fundamental obstacles to the comprehensive development and application of electronic mechanisms of democracy, and the existing regulatory framework creates the necessary basic conditions for the formation of a national system of e-democracy.

Conclusions

The problems studied in the scientific article prompted them to comprehend and develop directions for the use of electronic forms of direct democracy in Ukraine. Based on this, we made the following conclusions:

E-democracy is a form of realization by citizens of their political and civil rights through the use of digital or information and communication technologies. As a form of realization of rights, e-democracy should be considered as an alternative (subsidiary) option to traditionally recognized ways and practices of law enforcement. Therefore, the purpose of implementation is to promote the expansion of opportunities for the realization of citizens' rights.

The development and implementation of e-democracy policy by parliament, public authorities and local governments only makes sense if there is a real recognition of the need to use digital technologies, with an appropriate legal basis, for the development and strengthening of democratic practices. The idea of digitalization (digitalization) of the state should be balanced by awareness of the practical usefulness of the model, its instrumental significance for achieving the goals of sustainable development and progress, taking into account existing and potential risks.

The goal of state e-democracy policy is to provide multi-vector interactive communication streams designed to bring together citizens, deputies at all levels and the executive branch. The effectiveness of the implementation of e-democracy depends on many factors that require scientific and expert discussion and the formation of an appropriate concept of development.

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Features of the functioning of the institute of criminal offenses in Ukraine

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Abstract

It analyses the provisions of criminal and procedural legislation on the establishment of criminal offences, as well as the practice of their application. The application of a set of general methods and special scientific knowledge made it possible to formulate some proposals for: (1) determination of criminal liability for misdemeanours and increased penalties in the form of a fine for the commission of certain offences; 2) regulation in the Law of Ukraine to the international standard; (3) introduction by the National Police of the specialization of investigators with a clear reflection of jurisdiction in criminal procedure legislation; 4) addition of the Code of Criminal Procedure with provisions on the adoption of the relevant procedural decision by the investigating judge, in case the composition of the crime is not established and; 5) identification of the forensic doctor as the subject of the search, as well as a request for confiscation of property. It is concluded that the Code of Criminal Procedure of Ukraine must identify the coroner together with the investigator and the prosecutor as the object of the search, as well as, if necessary, request the seizure of property, mainly to temporarily seize the property during the detention of a person.

Keywords: criminal offense; release from punishment; pre-trial investigation; inquiry.

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Características del funcionamiento del instituto de delitos penales en Ucrania

Resumen

Se analiza las disposiciones de la legislación penal y procesal sobre el establecimiento de delitos penales, así como la práctica de su aplicación. La aplicación de un conjunto de métodos generales y de conocimientos científicos especiales permitió formular algunas propuestas para: 1) determinación de la responsabilidad penal para faltas y aumento de sanciones en forma de multa por la comisión de determinados delitos; 2) regulación en la Ley de Ucrania al estándar internacional; 3) introducción por parte de la Policía Nacional de la especialización de investigadores con un claro reflejo de jurisdicción en la legislación procesal penal; 4) adición del Código de Procedimiento Penal con disposiciones sobre la adopción de la decisión procesal pertinente por parte del juez de instrucción, en caso de que no se establezca la composición del delito y; 5) identificación del médico forense como sujeto de la búsqueda, así como una solicitud de confiscación de propiedad. Se concluye que el Código de Procedimiento Penal de Ucrania debe identificar al forense junto con el investigador y el fiscal como objeto del registro, así como, de ser necesario, solicitar la incautación de bienes, principalmente para incautar temporalmente los bienes durante la detención de una persona.

Palabras clave: infracción penal; infracción penal, exoneración de la pena, instrucción previa al juicio; indagación.

Introduction

Amendments to the preamble of the Constitution of Ukraine on February 7, 2019, enshrined at the level of the Basic Law the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine (On Amendments to the Constitution of Ukraine, 2019). As a result, the Ukrainian legal system, in particular in the areas of criminal law and criminal procedure, needs to be improved and modernized as never before in order to meet the high standards of European Union law.

On July 1, 2020, the institute of criminal offenses began to operate in the legal system of Ukraine, the main precondition for the introduction of which was the country's fulfillment of international obligations, harmonization of Ukrainian legislation with the legislation of other European countries, the desire to humanize domestic criminal law and, possibly, with reduction and optimization of the burden on law enforcement agencies, courts, and penitentiaries.

The decision to separate this institution from the Criminal Code of Ukraine necessitated the harmonization of the norms of this Code with the norms of the CPC of Ukraine. This was preceded by the adoption in November 2018 of the Law of Ukraine № 2617-VIII "On Amendments to Certain Legislative Acts of Ukraine to Simplify the Pre-trial Investigation of Certain Categories of Criminal Offenses". In December 2019, the law was amended and supplemented (Law of Ukraine № 321-IX). As a result, the introduction of the new legal institution was postponed for more than six months. This difficult path is due to the complexity of the problem, the solution of which is aimed at implementing another legal novel. In particular, it took time for technical measures to implement the new rule in the Unified Register of Pre-trial Investigations, to harmonize legislation and regulations, to establish a Training Center for Prosecutors, and so on.

Despite all the difficulties of theoretical, legal, law enforcement and social nature, the introduction of the institution of criminal offenses in the Ukrainian reality was another step towards building a European criminal justice system and a new important step towards creating a civil society based on social justice and humanistic principles (Aulin, 2020).

One of the main goals of the introduction of criminal offenses was to unload the investigation of minor criminal offenses to optimize resources that can be further used for better pre-trial investigation of crimes. The average workload of a National Police investigator used to be 280-300 at a time. Given that the number of investigators has decreased by 2,000 (the total number is now about 16,000) and that 50 % of criminal offenses are crimes, the burden on one investigator has fallen twice with a small error in the direction of increase, so it is about 160 criminal proceedings per person simultaneously (Regulations on the organization of activities of understanding units of the national police of Ukraine, 2020).

According to official statistics, in the period from 01.07.2020 to 31.10.2020, 50.4% of all reported criminal offenses were investigated in the form of an inquiry (130.7 thousand criminal offenses out of 259,3 thousand criminal offenses in total). These are common misdemeanors such as theft without qualifications (37 %), causing minor injuries (20%), fraud (16%), illicit drug use without the purpose of sale (9%), etc. A total of 98 criminal offenses (117 parts of the Special Part of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) (Letter of the National police №731 / 49 / 1-2020, 2020).

Even during the discussion of the draft law "On Amendments to Certain Legislative Acts of Ukraine to Simplify the Pre-trial Investigation of Certain Categories of Criminal Offenses", its main provisions have been the subject of numerous discussions by lawyers, politicians and members of the public. They still do not subside. In the framework of modern socio-political reform, the issues of responsibility for an act that does not pose a public danger,

ensuring and respecting human and civil rights and freedoms, further reform of law enforcement agencies in connection with the introduction of criminal offenses remain relevant and need to be adequately addressed.

1. Methodology of the study

In the process of writing a scientific article, a set of general and special methods of scientific knowledge is used, which are selected considering the goals and objectives set in the work, the specifics of the object and subject. They are based on the general dialectical method, i.e., the general scientific method used in the study of the theory and practice of the institute of criminal offenses. Methods of logic (analysis, synthesis, induction, deduction) are used in the study of scientific provisions, regulations and statistical materials relating to the regulation of criminal liability for criminal offenses, as well as ensuring the rights of the individual during the pre-trial investigation of this type of criminal offense. draw sound conclusions; system-structural method - in determining the optimal relationships between the processes that determine the approximation of criminal law regulation of misdemeanors and criminal proceedings of Ukraine to international standards; dogmatic method – in the interpretation of the conceptual apparatus of research; historical and legal method – in the study of the formation and development of legislation on the introduction of the institution of criminal offenses; comparative legal method – during the analysis of legislation, scientific categories, definitions and approaches; comparative method – when studying the state of ensuring the rights of the individual during the pre-trial investigation of criminal offenses; statistical method – in determining the state and dynamics of generalized results of sociological research. These methods were used during the study in their relationship and interdependence, which ensured the comprehensiveness, completeness, and objectivity of the obtained scientific results.

2. Analysis of recent research

The researched question has long been one of the most discussed in the legal literature. Some problems of reforming the legislation on administrative offenses and the introduction of the institution of criminal offenses were studied by such scientists as: O. Dudorov (Dudorov, 2013), P. Fris (Fris, 2012), V. Bozhik (Bozhik, 2020), I. Krasnytsky, O Horpynyuk (Krasnytsky and Horpynyuk, 2019), A. Voznyuk, D. Alekseyeva-Protsyuk (Voznyuk and Alekseyeva-Protsyuk, 2020), J. Núñez Grijalva (Núñez Grijalva, 2021) and other scientists. At the same time, today the implementation of the new institute in practice is accompanied by numerous discussions among both

procedural scholars and legal practitioners, has a number of legislative and organizational problems that need analysis and solution, including their relationship to the tasks, provided for in the Concept.

The purpose of the study is to analyze the national system of criminal and criminal procedure legislation, the practice of its application, development and implementation of effective guarantees of human rights during the pre-trial investigation of criminal offenses.

3. Results and discussion

An indisputable novelty of legislative changes, which are an essential component of the introduction of the institute of criminal offenses in Ukraine is the rejection of the monistic approach to defining the main object of criminal law regulation (criminal offense), which under the Criminal Code of Ukraine in 2001 recognized one object – a crime , and the introduction of a new law of a dualistic approach, according to which the object of criminal law is recognized as two types of criminal offenses – a criminal offense and a crime (Part 1 of Article 12 of the Criminal Code of Ukraine).

Thus, in addition to the notion of «crime», a new notion of "criminal misconduct" previously unknown to the criminal legislation of Ukraine was introduced into the content of the Criminal Code of Ukraine as a type of criminal offense. In this way, the criminal legislation of Ukraine has significantly approached the criminal legislation of a number of European states: the Criminal Code of Germany, France, Austria, Switzerland, Spain, Czech Republic, Lithuania, Latvia, Estonia, etc., which adhere to a dualistic approach in the legislative definition of object of criminal law regulation.

The legal nature of the concept of «criminal offense», which was first introduced into national law in 2012, is still insufficiently defined at the level of both legal understanding and lawmaking and law enforcement. At the same time, the law enforcer (investigator, prosecutor, judge) must have clear guidelines, must establish the distinctive features of the types of offenses (because it is about human destinies) and take into account how a specific act is «dangerous» or «harmful» to society and the state.

The state does not classify administrative offenses as socially dangerous acts, and therefore responding to them does not require the involvement of a criminal law mechanism. But, of course, an administrative offense is harmful for the state and society, because it can also harm the relevant values, so the state must respond to it – not only in court, but also in a more «simplified» manner.

Given that the criminal procedure legislation provides for a special abbreviated form of pre-trial investigation of criminal offenses, as well as

the presence of numerous gaps in the legal regulation of this institution, there may be a threat of human rights and freedoms, which necessitates additional procedural guarantees (Bozhik, 2020).

During the introduction of simplified forms of criminal proceedings, it is inadmissible to limit the procedural guarantees of ensuring the rights of its participants. In addition, the inviolability of the principles of criminal proceedings must be ensured. Restrictions on human rights and freedoms must be carried out exclusively within the framework of a clear criminal procedure and meet the stated purpose of such a restriction. As rightly noted in the literature, the use of any procedural coercion in criminal proceedings for criminal offenses should be carried out with a balance between ensuring the rights of the individual, on the one hand, and the need to perform the tasks of criminal proceedings, on the other (A new stage in the development of criminal legislation of Ukraine).

The current criminal procedure legislation does not provide for restrictions on the rights of individuals in criminal proceedings, and guarantees of observance of citizens' rights must remain unchanged. The person retains the same amount of inalienable human rights, and their restriction is of an exclusive legal nature.

During the pre-trial investigation and trial of criminal offenses, the same scope of a person's rights as provided for in the general procedure must be ensured, which will ensure the proper performance of the tasks of criminal proceedings specified in Art. 2 of the Criminal Procedure Code of Ukraine. According to the provisions of the Convention, an important component of the right to a fair trial is the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal. The establishment of a differentiated form of criminal proceedings for misdemeanors should facilitate the realization of this right of the person. At the same time, guarantees of ensuring the right to protection of a person in criminal proceedings are not limited.

It should also be noted that in law-making, the state has an obligation to make a clear distinction between administrative and criminal offenses. Currently, almost ten decisions of the European Court of Human Rights state that the legal nature and severity (imprisonment) of administrative penalties in the form of administrative arrest, provided by the Code of Ukraine on Administrative Offenses, indicate that administrative offenses are criminal offenses in the understanding of autonomous concepts used by an international judicial body in its activities.

The mentioned legal positions of the European Court of Human Rights indicate that when applying such norms of the Code of Administrative Offenses, the law enforcer must ensure, in particular, the right to protection at the level of criminal proceedings, as well as the requirements of such

proceedings. One of the ways to harmonize the legislation with the case law of the European Court of Human Rights is to exclude from the norms of the Code of Administrative Offenses such a penalty as administrative arrest. However, with the introduction of criminal offenses, the legislator did not solve this problem (A new stage in the development of criminal legislation of Ukraine).

3.1. Criminal legal aspect of the problem

Given the novelty of this institution in national law, we consider it necessary to examine the main updated provisions of the criminal law due to its introduction.

Ukrainian parliamentarians and lawyers followed the path of most colleagues from the European Union and made appropriate changes to the current Criminal Code of Ukraine. It is supplemented by a new fundamental and universal concept of "criminal offense", which is defined in Part 1 of Art. 11 of the Criminal Code of Ukraine as a socially dangerous criminal act (action or omission) provided by the Code, committed by a subject of a criminal offense. Based on Part 2 of Art. 1 and part 1 of Art. 50 of the Criminal Code to the content of this concept is added a sign of "criminal punishment of the act."

To determine the act of a criminal offense in each case it is necessary to establish the presence of all these features. The absence of at least one of them excludes the possibility of classifying the committed act as a criminal offense (criminal offenses or crimes), which, of course, excludes criminal liability for this act. An act or omission which, although formally containing the features of any act provided for by this Code, does not constitute a public danger due to insignificance, ie did not cause and could not cause significant harm to a natural or legal person, society or state, is not a criminal offense.

The concept of "criminal offense" is extremely important. It defines the content of the concepts of "criminal offense" and "crime", as well as the content (at the level of general) of the norms of the Special Part of the Criminal Code of Ukraine, which formulates the features of specific criminal offenses. Therefore, this concept actually performs the functions of the constituent and starting category of criminal law, which is important in both lawmaking and law enforcement.

"Criminal offense" is now a generic concept of "crime" and "criminal misconduct", and therefore, when qualifying an act under the Criminal Code of Ukraine in the wording of 01.07.2020, the law enforcer must finally decide what the guilty person committed: a criminal offense under part 1 of Article 185 of the Criminal Code of Ukraine, or a crime (parts 2-5 of Article 185 of the Criminal Code, respectively), as in the future it will be important for the criminal consequences of committing a criminal

offense. At the same time, the legislator actually proposes to distinguish between a criminal offense and a crime by means of the type and measure of punishment, which, in our opinion, does not seem to be the best option for such a distinction.

Although initially criminal offenses should be primarily "created" by many administrative offenses (which are "hidden" in the Code of Administrative Offenses) and some minor crimes. I. Krasnytskyi and O. Horpyniuk's remarks that the formal renaming of a crime to a criminal offense seems unjustified in a number of cases (in particular, in Article 107 of the Criminal Code of Ukraine, as parole can be applied only to juveniles who have served a certain share of the sentence in the form of imprisonment for a minor, serious or especially serious crime; the possibility of parole for a criminal offense is not provided) (Krasnytsky and Horpynyuk, 2019).

Significant changes have undergone and Art. 12 of the Criminal Code of Ukraine. Thus, Part 2 of the article now provides a legal definition of a criminal offense and states that it is an act provided by this Code (action or omission), for which the main punishment is a fine of not more than 3,000 non-taxable minimum incomes or other non-custodial punishment.

Also, the Criminal Code of Ukraine provides a scientifically sound classification of criminal offenses into criminal offenses and crimes, and the latter are divided into minor, serious and especially serious (Part 3 of Article 12 of the Criminal Code of Ukraine). This classification is based on a single scientifically sound criterion, which is reasonably recognized the severity of the criminal offense, which is determined by the nature and degree of public danger of the criminal offense (social (material) sign), which finds a specific formal and legal expression and enshrined in punishment type and measure) established in the sanction of the relevant article (part of the article) of the Special Part of the Criminal Code of Ukraine.

A significant gap seems to be the omission regarding the relevant amendments to the Law of Ukraine «On the Application of Amnesty in Ukraine» (1996), which is in force as amended on 14.05.2014, as this normative legal act still operates only with the concept of «crime» and does not use the terms "criminal offense" and "criminal offense". Although in Art. 86 of the Criminal Code of Ukraine, appropriate changes were made. That is, it can be assumed that in the event of a criminal offense, the person will not be subject to amnesty. In this case, quite logically, the question arises: if a person is fined, then perhaps an amnesty is not needed (although why for those who commit more socially dangerous encroachments (crimes) it is provided, and for those who have committed a misdemeanor – no?). But what if a person is arrested or restricted? Are there any signs of discrimination here as well?

It should be noted that there is no criminal liability for preparing for a misdemeanor. This condition is logical and in fact duplicates the approach of the previous version of the criminal law, which also provided for the absence of criminal liability for preparation for a minor crime. The scientific literature has expressed and still has a position on the need to abolish criminal liability not only for training, but also for attempting to commit a misdemeanor (Demidova, 2018). At the same time, such an approach has not been enshrined in law, perhaps due to its overly humanistic nature.

It is also worth noting the lack of a criminal record as a legal consequence of a conviction for a misdemeanor. Currently, in accordance with paragraphs 2-1 of Part 1 of Art. 89 of the Criminal Code of Ukraine, persons convicted of a criminal offense, after serving the sentence are recognized as having no criminal record. If the person who has served the sentence commits a criminal offense again before the expiration of the conviction, the course of the conviction shall be interrupted and recalculated. In these cases, the terms of repayment of the conviction are calculated separately for each criminal offense after the actual serving of the sentence (main and additional) for the last criminal offense (Part 5 of Article 90 of the Criminal Code of Ukraine) (Criminal code of Ukraine, 2001).

The legislative approach to the absence of a criminal record for misconduct has been widely criticized, in particular, L.Ostapchuk and D. Klyuchai are convinced that leaving a criminal offense without a criminal record contradicts both administrative and criminal law (Ostapchuk and Klochay, 2020).

One of the most difficult and controversial issues for law enforcement officers is the recurrence of criminal offenses. Thus, on the one hand, Art. 32 of the Criminal Code of Ukraine has undergone a mechanical replacement of the concept of crime with the concept of criminal offense. However, if, as a general rule, for the presence of recidivism, the stage of the criminal offenses that are included in the recidivism is still irrelevant.

So now there is no recidivism if it includes preparation for a criminal offense or a crime for which the article of the Special Part of the Criminal Code provides for imprisonment for up to two years or other milder punishment. In such cases, in accordance with Part 1 of Art. 14 of the Criminal Code, a person is not prosecuted, and therefore, this is not taken into account when determining the recurrence of criminal offenses. And, as I. Zinchenko rightly emphasizes, at least two criminal offenses that constitute it must retain their criminal-legal significance in case of repetition (Zinchenko, 2019). But, on the other hand, it should be borne in mind that some crimes, even of medium gravity, are now criminal offenses. That is, in the situation of detection, for example, preparation for theft and attempted fraud, there is no recurrence. Time will tell how correct this is.

In addition, it should be borne in mind that recidivism is very common in practice and can be considered either as a qualifying (especially qualifying) feature of a criminal offense, or as a circumstance that aggravates punishment. In this regard, T. Mykhaylichenko points to another shortcoming: the relevant changes were not made in paragraph 1, part 1 of Art. 67 of the Criminal Code of Ukraine, so there is only a recurrence and recurrence of crimes. That is, the commission of a criminal offense at a time when a person, for example, has not yet served a previous sentence for a crime or other misdemeanor will not aggravate the punishment (Mykhaylichenko, 2020).

Attention should also be paid to sanctions for criminal offenses. Interestingly, the fines for certain administrative offenses are much higher. Can such a small amount of fine somehow affect the perpetrator? Probably not, the only thing that can affect him in such situations is his "participation" in criminal proceedings and his conviction. In addition, as some scholars rightly point out, in the absence of appropriate punishment commensurate with the nature of the act, the purpose of such punishment will not be achieved, as the current fine can neither punish nor correct, prevent new crimes and especially (Voznyuk and Alekseyeva-Protsyuk, 2020).

In general, the analysis of the provisions of criminal law allows to state their unsystematic nature, the presence of some unfounded provisions that need to be corrected as soon as possible, as well as violations of fundamental legal principles. Given that a long time has passed since the introduction of the institute of criminal offenses in Ukraine, it seems unclear the legislator's approach to amending the Criminal Code of Ukraine, the Law of Ukraine "On Amnesty in Ukraine" and other legal documents.

3.2. Criminal legal aspect of the problem

The CPC of Ukraine provides for the features of pre-trial investigation and trial of criminal offenses, and evidence in criminal proceedings is a specific complex area of procedural activities of the parties to criminal proceedings, aimed at ensuring full and objective clarification of all circumstances to be established in criminal proceedings. misdemeanor proceedings, in order to effectively perform its tasks in a shortened inquiry procedure and taking into account the possibility of considering an indictment in summary proceedings (Bozhko, 2020). Despite the adoption of numerous amendments to the legislation of Ukraine by several laws, the current CPC of Ukraine has technical problems of a procedural nature, which are pointed out by theorists and practitioners. Let's carry out their detailed analysis for the purpose of working out of ways of the decision or elimination.

First of all, it is necessary to pay attention to certain problems of realization of procedural powers by the persons who carry out investigation of criminal offenses in the form of inquiry.

Pre-trial investigation of criminal offenses is investigated by conducting an inquiry (paragraph 4, part 1 of Article 3 and Article 215 of the CPC of Ukraine), which can be carried out only by officers of the National Police, Security Service, Tax Police and the State Bureau of Investigation (paragraph 41 part 1 Article 3 of the CPC of Ukraine) (Criminal procedural code of Ukraine, 2012).

On May 20, 2020, the Ministry of Internal Affairs of Ukraine approved the Regulations on the Organization of Activities of Inquiry Units of the National Police of Ukraine (Regulations on organization of activities of Units of national institutional bodies, 2020). It determines that the inquiry subdivisions are structural subdivisions of the central police administration body, its territorial bodies - the main departments of the National Police in oblasts, territorial (separate) subdivisions of the Main Directorates of the National Police. Thus, they are subordinated vertically to the heads of the Main Departments in the region, which is a classic management model for police investigative units (as opposed to the vertical management of interregional territorial bodies, such as patrol police, which are directly subordinated to the Kyiv headquarters outside the regional leadership).

The powers of the head of the department (sector) of inquiry of the territorial police body include the management of investigators, constant monitoring of the operational situation in the service area, etc. That is, this link performs the daily work of the head of the inquiry body. Its tasks include the establishment of specialization of investigators in the investigation of criminal offenses of certain categories, ie at the regulatory level provides for the specialization of investigators. In particular, the Regulations on the Organization of Activities of Inquiry Units of the National Police of Ukraine provide for a separate inquirer regarding misdemeanors committed by minors.

It should be noted that in practice there is no such specialization. All investigators in accordance with the bylaws investigate all criminal offenses, are universal experts. However, this does not mean that informal units cannot develop informal practices to determine the specialization of a particular investigator, for example based on his experience or special knowledge of the subject or just skills, such as the ability to better establish psychological contact with victims of violent crime. As specialization is necessary to increase the efficiency of inquiry, the introduction of specialization of investigators by the National Police of Ukraine would be a step in the right direction.

The powers of investigators are defined by separate articles of the CPC of Ukraine (Articles 401, 214, 298-1). Unlike investigators, who can only inspect the scene before entering information into the Unified Register of Pre-trial Investigations, investigators have the right to: select explanations; to conduct a medical examination; obtain the opinion of a specialist and take readings of means of photography and filming, video recording or technical devices with such functions; to seize tools and means of committing a criminal offense, things and documents that are the direct subject of a criminal offense, or which are found during the detention of a person, personal search or inspection of things (Criminal procedural code of Ukraine, 2012).

Prior to entering information into the Unified Register of Pre-trial Investigations, the scene may be inspected, explanations selected, a medical examination performed, a specialist's opinion obtained and readings of technical devices and technical means having photo and filming, video recording, or photo and filming means, video recordings, as well as seized tools and means of committing a criminal offense, things and documents that are the direct subject of the criminal offense, or which were found during the detention of a person, personal search or inspection of things.

Procedural sources of evidence in criminal proceedings concerning criminal offenses are determined by explanations, results of examination, expert opinion, photo and video materials in accordance with Art. 298-1 of the CPC of Ukraine. However, the study of the provisions of the CPC of Ukraine showed the absence of provisions on the adoption of the relevant procedural decision by the coroner, if as a result of the information entered into the Unified Register of pre-trial investigations of procedural actions he does not establish a criminal offense.

During the pre-trial investigation of criminal offenses it is allowed to carry out all investigative (search) actions provided by the CPC of Ukraine, as well as covert investigative (search), but only to obtain information from electronic information systems or parts thereof, access to which is not restricted by their owner or holder. or not related to overcoming the system of logical protection and to establish the location of the electronic means (Part 2 of Article 264 and Article 268 of the CPC of Ukraine) (Criminal procedural code of Ukraine, 2012).

It is not without reason that the introduction of the institution of misdemeanors is defined as the humanization of criminal law, as the corresponding changes strengthen the provision of human rights during the investigation. For example, a person who has committed a misdemeanor can be detained only in exceptional cases: if a citizen refuses to stop the misdemeanor or resists a police officer; tries to escape from the scene; refuses to comply with the lawful demands of the police during the pursuit; is in a state of alcohol or drug intoxication and may harm himself or others;

evades the bodies of pre-trial investigation or court. Detention of a person who drove a vehicle in a state of alcohol, drugs or other intoxication or under the influence of drugs that reduce attention and speed of reaction, is carried out for no more than three hours with mandatory delivery of such person to a medical institution to ensure passage appropriate medical examination.

In addition, only two types of precautionary measures can be applied to a person suspected of committing a misdemeanor – a personal obligation and a personal guarantee.

The current CPC of Ukraine does not refer the investigator to the subjects of petition for seizure of property (Article 171 of the CPC of Ukraine) along with the investigator and prosecutor, although such a need constantly arises, primarily for seizure of temporarily seized property during detention.

Also, the investigator is not referred to the subjects of the request for such an investigative (search) action as a search, although it is common in criminal proceedings. In practice, this is solved by the fact that such requests are filed by prosecutors, which creates an additional burden on them, because the investigator can not participate in the consideration of such a request by the investigating judge as a relevant participant in criminal proceedings. In our opinion, such a problem should be solved by making appropriate changes to the CPC of Ukraine. It also seems possible in which such requests will still be accepted from experts with reference to Art. 40-1 of the CPC of Ukraine, which stipulates that the investigator is endowed with the powers of an investigator during the inquiry, so he is identified with such a subject of appeal as an investigator (Criminal procedural code of Ukraine, 2012). However, such case law is not being developed at the moment, as the courts, according to the inquiry management and prosecutors voiced during the focus groups, simply do not accept petitions from what they consider to be inappropriate subjects of appeal.

At the end of October 2020, the Inquiry Department of the National Police of Ukraine asked the Supreme Court for clarification on this issue. Although the explanations of the Supreme Court, unlike the legal positions formulated as a result of the case in the cassation instance, are not binding on the courts of first and second instance, they are usually guided by judges. Therefore, before making changes to the legislation, the problem can be solved in this way.

At present, the practice of non-acceptance by investigating judges of motions to seize property or conduct a search by investigators with reference to their absence among the subjects of appeal to the court in the CPC of Ukraine is not widespread. At the same time, there is an assumption that such requests may be accepted, given that the investigator in the exercise of powers is endowed with the powers of the investigator. Therefore, this issue may not require legislative changes to be resolved, which will depend, inter alia, on the future clarification of the Supreme Court.

Compared to the investigation of crimes, the terms of pre-trial investigation of criminal offenses have been shortened. The pre-trial investigation must be completed within 72 hours from the date of notification of the suspect; within 20 days – if the suspect does not plead guilty or if it is necessary to conduct additional investigative (search) actions, or if the criminal offense was committed by a minor; or within one month – if the person has applied for an examination.

If additional investigative and search actions are required, the inquiry period may be extended up to 30 days. In exceptional cases, the pre-trial investigation may be extended for up to two months. In addition, the terms of the trial, which must be set within five days of receiving the indictment, have been shortened. And if a person is detained, a trial must be ordered immediately.

The institute of criminal offenses has accelerated the average time for pre-trial investigation and trial of minor criminal offenses, especially in proceedings where the suspect pleads guilty. Compared with the term of pre-trial investigation in 2 months with the possibility of extension to 6 months (but not more), provided by Articles 219, 294 of the CPC of Ukraine, for similar criminal offenses of crimes of small gravity and part of medium gravity, the terms of investigation were accelerated, in particular due to the reduction of the upper limit. The available data give grounds to claim that the term of pre-trial investigation of criminal offenses has been doubled by normative restrictions of the term of inquiry (Krapivin, 2021).

We believe that the CPC of Ukraine does not clearly define the terms of inquiry, the countdown of which begins from the date of notification of the person of suspicion. The legislator missed the indication of the term of inquiry from the moment of entering the information into the Unified Register of Pre-trial Investigations and until the person is notified of the suspicion. If in respect of minor, serious and especially serious crimes, the legislator specifies such deadlines in Part 2 of Art. 219 of the Criminal Procedure Code of Ukraine, there is no such norm in relation to criminal offenses in the specified code. The interrogators have rather short terms of completion of the inquiry from the moment of notifying the person of the suspicion of committing a criminal offense: 72 hours, 20 days and 1 month, depending on the circumstances specified in Art. 219 of the Criminal Procedure Code of Ukraine (Criminal procedural code of Ukraine, 2012).

With the amendments to the CPC of Ukraine regarding criminal offenses, the legislator allowed quite frequent duplication of identical legal relations in different articles of the CPC of Ukraine, which complicates the understanding and application of these norms. In particular, the procedure for extending the terms of inquiry is duplicated in paragraph 1, part 4 of Art. 219 and in Art. 294 of the CPC of Ukraine and leads to a misunderstanding of the general term of inquiry, for which the prosecutor has the right to extend it.

The legislator, having established restrictions on the possibility of extending the terms of inquiry in Art. 219 of the CPC of Ukraine (the term of inquiry may be extended only for criminal offenses referred to in paragraphs 1 and 2 of Part 4 of Article 219), in Art. 294 of the CPC of Ukraine did not specify these restrictions, which in practice may lead to confusion in the application of this provision.

We also consider the legal regulation of the terms of detention of a person who has committed a criminal offense to be not entirely successful. In particular, in Part 2 of Art. 298-2 of the CPC of Ukraine specifies one term of detention of a person – three hours from the moment of actual detention, and in Part 4 of the same article – other terms of detention of a person: 72 hours and 24 hours. Officials with the right to detain a suspect in a criminal offense are in accordance with Part 3 of Art. 298-2 of the CPC of Ukraine «authorized persons» and "coroner".

An investigator is an official of an inquiry unit of the National Police, a security body, a body that monitors compliance with tax legislation, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation, or an authorized person of another unit of these bodies within its competence. However, which official – the «authorized person» or the «investigator» – has the right to detain a person for 3 hours, 72 hours and 24 hours, as well as whether the 3-hour detention period is included in the 24 and 72-hour detention periods or whether separate term of detention - the legislator did not provide an answer, which may lead to different interpretations of these terms by the participants in the criminal proceedings.

In accordance with paragraph 4 of Part 3 of Art. 214 of the CPC of Ukraine to clarify the circumstances of a criminal offense before entering information into the Unified Register of pre-trial investigations may be seized tools and means of committing a criminal offense, things and documents that are the direct subject of a criminal offense or found during the detention of a person or reviewing things. Similar instructions are duplicated in Art. 298-3 of the Criminal Procedure Code of Ukraine.

From the standpoint of elementary logic, this rule is incomprehensible. The question arises: how can objects and things be removed before entering information into the Unified Register of Pre-trial Investigations, if their detection is possible during procedural actions (detention, personal search, or inspection of things), which the investigator can carry out only after entering information into the Unified Register of Pre-trial Investigations; investigations?

The most controversial in terms of compliance with Art. 129 of the Constitution of Ukraine and the general principles of criminal proceedings (Chapter 2 of the CPC of Ukraine) is the possibility of using the court as

evidence in criminal offenses written explanations, testimony of witnesses, victims, specialists and material evidence without participants in criminal proceedings in a simplified manner court, when a person unequivocally admits his guilt in the presence of a lawyer and does not want to participate in the trial. In this case, the person is deprived of the right to appeal the sentence. It is obvious that such a "simplified procedure" contradicts the principles of adversarial proceedings, proving before the court the persuasiveness of evidence, publicity of the trial to ensure unconditional (see Article 129 of the Constitution of Ukraine) appellate review, as well as the presumption of innocence, guilt, right to defense, immediacy of research of indications, things and documents, publicity, dispositiveness, etc.

The Ukrainian legislator must ensure the avoidance of violations of human and civil rights and freedoms by law enforcement agencies, which may be caused by shortened investigation, duplication of certain provisions of the CPC of Ukraine, lack and vagueness of regulations governing the investigation of criminal offenses. After all, these problems are abusing their powers, interpreting the uncertainty of the law in favor of the prosecution.

Conclusions

The analysis of the provisions of the criminal and procedural legislation concerning the institute of criminal offenses introduced in Ukraine, as well as the practice of their application, allowed to draw the following conclusions.

In order to avoid restriction of a person's rights and strict observance of the amnesty dismissal procedure in the event of a criminal offense, the Law of Ukraine «On the Application of Amnesty in Ukraine» needs to be streamlined. It operates only with the concept of «crime» and does not use the terms «criminal offense» and «criminal offense» offense».

The criminal law is subject to streamlining in terms of determining criminal liability for preparing for a misdemeanor, as well as increasing sanctions in the form of fines for committing criminal offenses that are more socially dangerous than certain administrative offenses.

In order to increase the efficiency of the investigation of criminal offenses in the form of an inquiry, it is expedient for the National Police of Ukraine to introduce specialization of investigators with a clear reflection of jurisdiction in the criminal procedure legislation.

The Criminal Procedure Code of Ukraine needs to supplement the provision on the relevant procedural decision by the coroner, if as a result of the information conducted before entering information into the Unified Register of pre-trial investigations of procedural actions, he does not establish the composition of the criminal offense.

The Criminal Procedure Code of Ukraine should identify the coroner along with the investigator and prosecutor as the subject of the search, as well as request the seizure of property, primarily to seize temporarily seized property during the detention of a person.

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Correlation of the Right to Keep and Bear Arms with Ensuring the Right to Life and its Protection

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Abstract

The right to keep and bear arms can be considered a means of self-defence and can become a major threat to public safety if the purpose of the use of weapons is not to protect the right to life. The aim of the article is to establish the relationship between the number of weapons in civilian possession and the right to life and protection. The objective involved the following methods: statistical analysis, correlation analysis, generalization and analogy, hypothetical-deductive model. Countries in which the right to keep and bear arms is enshrined at the constitutional level are identified. They also identified the countries with the highest number of weapons stored and born by the population, their indicators were taken as a basis in the study. As a conclusion, it has been found that the correlation between the number of legal and illegal weapons in civilian possession, including per 100,000 inhabitants, the number of weapons kept by law enforcement officers and the number of people killed with weapons has a low level of negative correlation. It was found that the right to keep and bear arms is effective in guaranteeing the right to life and its protection, but not exclusive.

Keywords: weapons; homicide; self-defense; violence; right to life.

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Correlación del Derecho a Poseer y Portar Armas con la Garantía del Derecho a la Vida y su Protección

Resumen

El derecho a poseer y portar armas puede considerarse un medio de autodefensa y puede convertirse en una gran amenaza para la seguridad pública si el propósito del uso de armas no es proteger el derecho a la vida. El objetivo del artículo es establecer la relación entre el número de armas en posesión civil y el derecho a la vida y la protección. El objetivo involucró los siguientes métodos: análisis estadístico, análisis de correlación, generalización y analogía, modelo hipotético-deductivo. Se identifican los países en los que el derecho a poseer y portar armas está consagrado a nivel constitucional. Tambien se identificaron los países con mayor número de armas guardadas y nacidas por la población, sus indicadores se tomaron como base en el estudio. Como conclusion se ha descubierto que la correlación entre el número de armas legales e ilegales en posesión civil, incluido por cada 100.000 habitantes, el número de armas guardadas por agentes del orden y el número de personas muertas con armas tiene un bajo nivel de correlación negativa. Se comprobó que el derecho a poseer y portar armas es efectivo para garantizar el derecho a la vida y su protección, pero no excluyente.

Palabras clave: armas; homicidio; autodefensa; violencia; derecho a la vida.

Introduction

All democracies in the world are guided by the rule of law, which recognizes the most important value of human life and health. Therefore, the state must ensure the right to life and its protection. Violence with the use of arms is a current global human rights problem (Amnesty International, n. d.). All over the world, the issue of illicit trafficking in arms is acute as a threat to life on the one hand, and a means of protection and self-defence at the time of encroachment on life on the other.

In a developed democratic society, every citizen has the maximum opportunity to protect and defend their own violated rights and freedoms and those of family members, relatives, and others. The state shall create an appropriate legislative mechanism that would properly enshrine, ensure, and protect it. Sometimes the inability of public authorities to take real measures to protect life or health creates favourable conditions for illegal encroachments on the life, health of citizens and their property.

Arms are used far more often around the world to violate than to protect the human right to life. The right to keep and bear arms is not a human right,

but a kind of privilege. International regulations enshrine the human right to life. However, arms are rarely used to protect this right, as evidenced by statistics. In 2017, about 2,000 firearms were used for self-defence in the United States. This should be compared to 60,000 cases of the use of arms for other purposes than defence. This means that there are 30 people who are abused for every person who defends himself/herself with arms (Dancy, 2018).

Therefore, the correlation between the right to keep and bear arms and the guarantee of the right to life and its protection are closely interrelated institutions that require detailed study.

The aim of the research paper is to establish the correlation between the number of arms in civilian possession and guaranteeing the right to life and its protection. Research objectives of the article:

1. Identify the countries with the largest number of arms in civilian possession.
2. Analyse statistical indicators of the number of arms in legal or illegal civilian possession, the number of arms kept by law enforcement agencies, the number of homicides with arms.
3. Establish a correlation between the number of arms in civilian possession and the guarantee of the right to life and its protection.
4. Prove or disprove assumptions about the effectiveness of the use of arms in self-defence.

1. Literature Review

Research is characterized by two approaches to the correlation of the right to keep and bear arms with the right to life and its protection. The first is the right to keep and bear arms as a necessary means of self-defence. The state shall control the processes of legalization of keeping and bearing arms. The second is that the right to keep and bear arms for self-defence is unjustified and therefore poses a greater threat to the life and health of the population.

The state shall ensure the right to life, which provides a set of substantive and procedural obligations of the state: 1) negative — refrain from intentional and illegal taking life; 2) positive — take measures to ensure the safety of persons under its jurisdiction: a) the obligation to ensure the availability of regulations; b) the obligation to take preventive measures; 3) procedural — ensure effective investigation of violations of substantive aspects of the right to life (European Court of Human Rights, 2021).

Romanov O. positions that the right to keep and bear arms (as an integral part of the human right to protection) is at the same time a guarantee of other human rights (primarily the right to life and health). This conclusion is confirmed by the position that the right of a citizen to acquire, possess, carry, and use arms is one of the main ways to protect their own lives (Romanov, 2005).

Straight (2021) holds a similar position, justified the right to self-defence as the main one, which provides for the right to bear arms. The right to bear arms is a means of ensuring a person's fundamental right to self-defence. A person has the right to self-defence against all others. Therefore, persons have the right to self-defence against other individuals; civil servants who have the right to keep and bear arms are no different from individuals; individuals have the right to self-defence against the government.

The issue of firearms as a means of self-protection of citizens from criminal encroachment is reduced to two opposing views: the first one — to legalize short-barrelled firearms, the second — to prevent keeping and bearing such arms by civilians (Chystokletov and Pastryulina, 2011).

In general, enshrinement of the right to keep and bear arms for self-defence at the constitutional level is quite rare. Only 15 constitutions have ever included the right to bear firearms (Butkevych and Hembach, 2016). No international human rights law protects the right to keep and bear arms. This is justified by two reasons: first, self-defence is the only exception to the use of force; second, representative democracy is an integral part of every international human rights treaty, which provides that people have the right to rise and overthrow an undemocratic form of government (Schmidt, 2007).

There is no common European experience in legalizing keeping and bearing arms by the civilian population. Legislation governing the possession of arms by civilians for the purpose of protection varies considerably from country to country, but the common denominator is that the constitutions of the European Union do not enshrine citizens' rights to keep and bear arms. The vast majority of countries have a fairly liberal legislation that enshrines the right to use arms to protect one's own lives and other people's lives (Hudz and Maltsev, 2018).

Baldwin (n. d.) is a supporter of the second approach and notes that traditional self-defence does not justify any violent action simply because the other person has struck the first blow or threatened to commit acts dangerous to life and health. Traditional self-defence laws require a person who is attacked or threatened with imminent attack to: act wisely; retreat, if possible, without any physical action; use only reasonably necessary force to repel the attacker.

The regulation of the right to keep and bear arms should include the following aspects: determining the subjects to whom the right to hold and bear arms is granted for the purpose of self-defence; conditions for the use of arms for self-defence and protection of other rights; arms legislation should provide for a trial in case of homicide from arms at the time of self-defence; control over the storage of arms for self-defence as a matter of public safety; legislatures must ensure that no person who keeps arms has power over others in society (Samraj, 2020).

2. Materials and Methods of Research

The main approach in the study of the correlation between the right to keep and bear arms and the right to life and its protection was to establish the countries with the largest number of arms being legally and illegally in civilian possession. We believe that the analysis of the indicators studied in these countries best reflects the correlation between the right to keep and bear arms and the right to life and its protection.

The correlation between the right to keep and bear arms and the right to life and its protection was studied using the method of statistical analysis of the number of arms being legally and illegally in civilian possession, the number of arms kept by law enforcement agencies, the number of homicides with arms.

The correlation analysis was used to establish the correlation between the estimate of firearms in civilian possession, estimate of civilian firearms per 100 persons, registered firearms, unregistered firearms for 2017 in the US, India, China, Pakistan, Russia, Brazil, Mexico, Germany, Iran, Saudi Arabia, South Africa, Colombia, Ukraine, Afghanistan, Egypt, the Philippines and homicide rate from firearms, measured as the number of deaths per 100,000 in 2017 in these countries; between the estimate of firearms in civilian possession and the Global Firearms Holdings Law enforcement firearms in 2017 in the countries under study; homicide rate from firearms, measured as the number of deaths per 100,000 in 2017 in these countries and Global Firearms Holdings Law enforcement firearms.

The study used the formula of correlation analysis (Equation 1):

$$r = \frac{\sum(x_2 - \bar{x}_1) \times (x_2 - \bar{x}_2)}{\sqrt{\sum(x_1 - \bar{x}_1)^2} \times \sqrt{\sum(x_2 - \bar{x}_2)^2}} \quad (1)$$

where x_1 — estimate of firearms in civilian possession and x_2 – homicide rate from firearms, measured as the number of deaths per 100 000, r – linear correlation coefficient.

The hypothetico-deductive method, the method of generalization and analogy helped to prove the assumptions about the effectiveness of the use of arms in self-defence. The study used the most significant scientific works that reflect the development of scientific thought in the field of the right to keep and bear arms and its effectiveness in self-defence for the period of 2005 to 2021. The paper analyses the following indicators:

- Global Firearms Holdings Civilian-held firearms in the 25 top ranked countries and territories y 2017 year reflected in Small Arms Survey.
- Homicide rate from firearms, measured as the number of deaths per 100 000 in 2017 reflected in Our World in Data (2018).
- Global Firearms Holdings Law enforcement firearms in 2017 reflected in Small Arms Survey.

3. Research Results

If we consider the right to keep and bear arms through the prism of ensuring the right to life and its protection, the right to keep and bear arms is a derivative right. Ensuring the right to life covers the right to self-defence, which may or may not (depending on the legislative regulation) be exercised with the use of arms.

In the world, civilian population hold the largest number of arms, while law enforcement agencies — the smallest (Figure 1).

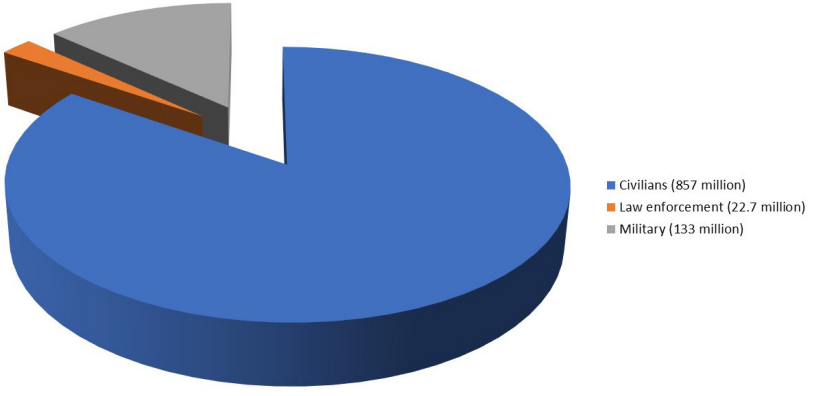

Figure 1: Global firearms holding estimates, 2017.

Source: Small Arms Survey, 2018.

The right to keep and bear arms is enshrined at the constitutional level in only three countries: the United States, Guatemala, and Mexico. There is no such practice in Europe.

Accordingly, the United States is the country with the largest number of arms in the world in civilian possession in 2017 (Table 1). However, despite the First and Second Amendments to the Constitution, most weapons are held illegally. Other countries that were in the top 25 countries with the largest number of arms in civilian possession in 2017 are: India, China, Pakistan, Russia, Brazil, Mexico, Germany, Iran, Saudi Arabia, South Africa, Colombia, Ukraine, Afghanistan, Egypt, Philippines.

Table 1. Global Firearms Holdings Civilian-held firearms in the 25 top ranked countries and territories, 2017.

State	Estimate of firearms in civilian possession	Estimate of civilian firearms per 100 persons	Registered firearms	Unregistered firearms
United States	393,347,000	120.48	1,073,743	392,273,257
India	71,101,000	5.30	9,700,000	61,401,000
China	49,735,000	3.58	680,000	49,055,000
Pakistan	43,917,000	22.32	6,000,000	37,917,000
Russian Federation	17,620,000	12.29	6,600,000	11,020,000
Brazil	17,510,000	8.29	8,080,295	9,429,705
Mexico	16,809,000	12.91	3,118,592	13,690,408
Germany	15,822,000	19.62	5,830,000	9,992,000
Iran	5,890,000	7.28	-	-
Saudi Arabia	5,468,000	16.70	-	-
South Africa	5,351,000	9.65	3,000,000	2,351,000
Colombia	4,971,000	10.13	706,210	4,264,790
Ukraine	4,396,000	9.90	800,000	3,596,000
Afghanistan	4,270,000	12.50	-	-
Egypt	3,931,000	4.13	250,000	3,681,000
Philippines	3,776,000	3.64	1,739,000	2,037,000

Source: Small Arms Survey (2018).

At the same time, in 2017, the leader among the studied countries in the number of people killed with weapons is Colombia, followed by Brazil, Mexico, the Philippines, the United States, Afghanistan, South Africa and others with less than 1 per 100,000 population (Table 2).

Table 2. Homicide rates from firearms (Homicide rate from firearms, measured as the number of deaths per 100 000), 2017.

United States	4.63	Iran	0.59
India	0,74	Saudi Arabia	0.15
China	0.04	South Africa	4.30
Pakistan	0,58	Colombia	21.70
Russian Federation	0.84	Ukraine	0.65
Brazil	20.41	Afghanistan	4.55
Mexico	11.49	Egypt	0.25
Germany	0.10	Philippines	9.54

Source: Our World in Data (2018).

To establish the correlation between the number of weapons and those killed with the use of weapons, it is necessary to correlate between the data in Table 1 and Table 2.

Thus, the linear correlation index between the number of arms in civilian possession in 2017 and those killed with weapons in 2017 is -0.064, which indicates a negative correlation between these data.

The linear correlation index between the number of arms in civilian possession in 2017 per 100,000 population and those killed with arms in 2017 is -0.042, which indicates a negative correlation between these data.

The linear correlation index between the number of legalized arms in civilian possession in 2017 and those killed with arms in 2017 is -0.019, which indicates a negative correlation between these data.

The linear correlation index between the number of illegal arms in civilian possession in 2017 and those killed with arms in 2017 is -0.111, indicating a negative correlation between these data.

It has been established that the number of arms that are legally or illegally in civilian possession has a negative correlation with the number of homicides with arms. That is, the more arms, the fewer homicides with arms.

The right to keep and bear arms in each country is legally enshrined by law enforcement officials. They are authorized to prevent and fight crime, as well as to protect the rights and interests of people. Law enforcement agencies, among other things, ensure the right to life and its protection.

In 2017, the leader among the surveyed countries in the number of law enforcement officers holding arms is the Russian Federation, followed by China, India, Egypt, the United States and others with the number of arms less than 1,000,000 (Table 3).

Table 3. Global Firearms Holdings Law enforcement firearms, 2017

United States	1,016,000	Iran	98,000
India	1,700,000	Saudi Arabia	214,000
China	1,971,000	South Africa	250,481
Pakistan	944,000	Colombia	283,000
Russian Federation	2,432,000	Ukraine	289,000
Brazil	803,000	Afghanistan	239,000
Mexico	591,000	Egypt	1,530,000
Germany	466,000	Philippines	139,043

Source: Small Arms Survey (2018).

The linear correlation index between the number of arms held by law enforcement officials in 2017 and those killed with arms in 2017 is -0.295, which indicates a negative correlation between these data.

This figure suggests that more law enforcement arms do little to prevent homicide from arms. Thus, it can be argued that the armed law enforcement agencies are more effective in ensuring the protection of the right to life and its protection.

The linear correlation index between the number of arms in civilian possession in 2017 and the number of arms held by law enforcement agencies in 2017 in the studied countries is 0.199, indicating a low level of positive correlation between these data.

So, the number of arms held by law enforcement agencies depends on the number of arms in civilians' possession. Such correlation is due to the greater threat to the life of the population and the need to protect it.

4. Discussion

Many arms in the world, including illegal ones, have created a ground for the study of the purpose of their use, the reasonability of enshrining the right to possess it at the constitutional level, as well as the effectiveness of its use in self-defence. Thus, the positions of scholars divided into two. The first group of scholars argues that one of the main ways to protect one's life is the right of a person to acquire, keep, bear, and use arms (Romanov, 2005). That is, the main purpose for the acquisition, keeping, bearing, and using arms by individuals is the direct realisation of the individual's right to self-defence (Didenko, 2016).

Possession of arms creates equal conditions between the weakest and the strongest, therefore it is an additional guarantee of protection of life. There are no alternative means of effective self-defence other than arms possession (Gingrich, 2012).

The use of gun control measures violates the right to self-defence or to prevent an attack. If a particular arms control measure has generally positive results, it primarily violates the rights of those who are killed or severely harmed by their inability to defend themselves (Crummett and Swenson, 2020).

Gun control (Boothby, 2021) can make people safer on average, but it does not make everyone safer, and those who violate their rights are less secure (Huemer, 2016). McMahan (2012) holds the opposite position, who proved that gun control makes everyone safer and therefore contributes to everyone's ability to prevent physical injury. Accordingly, no one's right to physical security is violated. Wright *et al.* (2017) argue that the more arms a population possesses, the more homicides.

Proponents of legalization of arms for self-defence provide the following arguments: first, criminals can still carry illegal arms, second, law enforcement officers are not always effective and timely to protect citizens from criminals, and third, possession of arms is rather a preventive measure to prevent criminal acts, because in this case the attacker may be wary of protective actions of the victim of the attack.

The study found that the relationship between the number of legal and illegal arms in civilian possession, the number of arms in civilian possession per 100,000 population, and the number of people killed using arms was low. This suggests that in countries with more arms there are fewer homicides using arms. Such correlation is low, so it is impractical to state unequivocally its exclusive role. However, this justifies the position of scholars who argue for the need to enshrine the right to possess arms as a means of self-defence and a guarantee of the right to life.

In addition to the civilian population, law enforcement agencies have the right to keep and bear arms, however, given the fact that the police may not always be present in all places to ensure public safety, citizens may use arms for self-defence (Simpson, 2019). The effectiveness of violence prevention and self-defence depends on the form of arms possession, so open bearing of arms is more effective than covert one (Roberts, 2018).

The right of the population to keep and bear arms has two main reasons: the first is to provide citizens with the means to resist a tyrannical government; the second is to provide citizens with the means to protect themselves, their loved ones from violence and their property from criminal encroachment (Bernstein, 2020).

This position is not accidental, as any changes in legislation, including the enshrinement of additional rights, are due to the emergence of new social relations or changes in existing ones. Protective factors, such as victimization and personal security concerns, are important in enshrinement of the right to keep and bear arms, but they outweigh criminogenic factors such as violence, disorder, and lack of trust in the police (Brennan, 2018).

The police violence against citizens has led to mass protests and an increased number of applications for firearms (McGinnis, 2020), as has been the case in the United States, leading to the adoption of the Second Amendment to the US Constitution as a guarantee of the right to keep and bear arms for self-defence (Blocher, 2012). The study proved that the linear correlation index between the number of weapons held by law enforcement agencies in 2017 and those killed with arms in 2017 is -0.295.

This suggests that in countries where law enforcement agencies have more arms, there are fewer cases of gun homicides. Therefore, it is no coincidence that the interdependence between the number of arms possessed by law enforcement agencies in 2017 and the number of arms in civilian possession in 2017 is positive at a low level. That is, more arms in civilian possession correspond to more arms held by law enforcement agencies.

Proponents of the second approach argue that although the right to self-defence is a human right, the right to keep and bear arms cannot be a human right — it should be understood as a derivative legal option, right and privilege (Samraj, 2020).

The position on the need to enshrine the right to keep and bear arms manipulates the ideals of human rights, in particular the inalienable right to life, in order to establish an unimpeded right to armed self-defence. This statement is based on the need to protect oneself and the loved ones from violence without regard to the rights of others. The claim that the most effective means of self-preservation is the use of firearms is false. This undermines the role of a democratic society in preserving the rights and lives of its citizens.

The right to keep and bear arms undermines the fundamental right to life of countless people by an armed civilian whose subjective fear may cause harm. Fundamental rights and freedoms are not unlimited but are part of a social contract in which all persons must also respect the rights and dignity of others. The right to personal security is often misinterpreted as a broad right to self-defence against any perceived threat.

To fairly protect one's personal right to security, a person may use force only to the extent required by the situation and when there are no other means of protection against attack. The use of force falls under the law of security only when the force is proportional to the threat (Bhatia, 2020).

We deny this position, given that the right to keep and bear arms is not always accompanied by its use, therefore it can be used for preventive purposes. At the same time, the right to keep and bear arms is not exclusive and must meet the need to provide it to the relevant subjects.

Conclusions

The legislative definition of the right to keep and bear arms has a fine line between guaranteeing of the right to life, protecting the person being encroached upon and ensuring public order and security in general. It is established that only three countries have enshrined the right to keep and bear arms at the constitutional level: the United States, Guatemala, and Mexico.

The countries with the highest number of arms in civilian possession are the United States, India, China, Pakistan, the Russian Federation, Brazil, Mexico, Germany, Iran, Saudi Arabia, South Africa, Colombia, Ukraine, Afghanistan, Egypt, and the Philippines. The indicators of these countries were taken as a basis in the study.

The interdependence between the number of legal and illegal arms in civil possession, the number of arms in civil possession per 100,000 population, and the number of people killed using arms has been found to have a low level of negative correlation. This suggests that there are fewer homicides using arms in countries with more arms. The level of this correlation is low, so it is impractical to state unequivocally about its exclusive role.

The subjects who have the right to hold arms are law enforcement agencies to ensure law and order in society, while guaranteeing the right to life and protection of people. It was found that the correlation between the number of arms held by law enforcement agencies in 2017 and those killed with arms in 2017 is reflected in the linear correlation index, which is -0.295. Thus, in those countries where law enforcement agencies have more arms, there are fewer cases of homicides with the use of arms.

The indicator of the interdependence between the number of arms held by law enforcement officers in 2017 and the number of arms in civilian possession in 2017 is positive at a low level. That is, more arms in civilian possession correspond to more arms held by law enforcement officers.

Therefore, the right to keep and bear arms by civilians and law enforcement agencies is effective in guaranteeing the right to life and protection, but it is impractical to regard the right to keep and bear arms as the only effective right to self-defence, as the interdependence between these categories is low.

The prospect of further research is to study the conditions of legal use of arms by individuals at the time of encroachment on their right to life and health.

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Government Tax Policy in the Digital Economy

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Abstract

The article considers the peculiarities of the formation and implementation of tax policy in the development of the digital economy, reveals current problems, and substantiates the need to change the tax system. The directions of compensation of the reduction of income from the labor tax through automation and introduction of artificial intelligence in technological processes are defined and the forms of taxation of digital commerce are offered. The research methods were scientific abstraction, logic, graphics, visual reflection, analytics. It has been proven that the process of digitalization of the economy in combination with the crisis caused by COVID-19 causes many risks that must be considered when developing tax policy. Emphasis is placed on the implementation of a tax policy based on digital transformation, which stimulates innovation, ensures efficiency, and improves the quality of tax services. Increasing the use of digital technologies has been shown to create challenges in many areas of public administration, including taxation. It concludes that there is a need for broad international cooperation to prevent tax evasion, ensure tax transparency and develop new tax approaches and software.

Keywords: tax policy; digital economy; digitalization; taxes; digital platforms.

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Política Fiscal Estatal en la Economía Digital

Resumen

El artículo considera las peculiaridades de la formación e implementación de la política tributaria en el desarrollo de la economía digital, revela los problemas actuales y fundamenta la necesidad de cambiar el sistema tributario. Se definen las direcciones de compensación de la reducción de ingresos del impuesto al trabajo a través de la automatización e introducción de inteligencia artificial en los procesos tecnológicos y se ofrecen las formas de tributación del comercio digital. Los métodos de investigación fueron: abstracción científica, lógica, gráfica, reflexión visual, analítica. Se ha comprobado que el proceso de digitalización de la economía en combinación con la crisis provocada por el COVID-19 provoca muchos riesgos que deben ser tomados en cuenta al momento de desarrollar la política tributaria. Se pone énfasis en la implantación de una política tributaria basada en la transformación digital, que estimule la innovación, asegure la eficiencia y mejore la calidad de los servicios tributarios. Se ha demostrado que aumentar el uso de tecnologías digitales crea desafíos en muchas áreas de la administración pública, incluida la fiscalidad. Se concluye que existe la necesidad de una amplia cooperación internacional para prevenir la evasión fiscal, garantizar la transparencia fiscal y desarrollar nuevos enfoques y software fiscales.

Palabras clave: política fiscal; economía digital; digitalización; impuestos; plataformas digitales.

Introduction

The crisis caused by the COVID-19 pandemic has led to the need to accelerate the economy's business and the changes in tax policies that arise from its digitization. Modern crisis phenomena also lead to increased pressure on public finances and public dissatisfaction with the existing tax planning. Now the government and business have realized the need to develop measures to adapt to new realities. The development of modern technologies puts several complex issues for domestic tax policy.

This is regarding taxation of transnational business; compensation of possible decrease of income from labor tax because of automation of a significant part of processes and introduction of artificial intelligence i.e., developing general approaches to taxation in the digital economy. The main issue of foreign tax policy is to change its priorities to address the new challenges arising from the development of the digital economy. Due to long-term economic uncertainty, many countries consider cautious

measures to adapt their tax policies to new requirements (McKinsey and Company, 2020).

1. Materials and methods

The aim of the article is to give an overview of the main features of the digital economy and how its effect on development future tax policy.

The main research methods were scientific abstraction, logical generalization of changes in tax policy in a digital economy, graphical method for visual reflection of trends in government consolidated gross debt and its share in GDP, analytical method for determining the share of total general government expenditure in GDP, visual reflection the system of government tax policy in modern conditions.

2. Results and discussion

One of the main modern tools for returning to sustainable economic development is a well-balanced state tax policy, which in the context of digital transformation should stimulate innovative activity, ensure efficiency, and improve the quality of services. Digitalization also gives society more inclusiveness and improves the welfare of the population when properly implemented. At the same time, the increasing use of digital technologies poses challenges in many areas of public administration, including taxation. Moreover, the reform of the international tax system during the digital transformation is currently a priority of the international economic community.

Digitalization and the crisis caused by COVID-19 have led to many potential risks e.g., analysts predict a reduction in the number of jobs in Europe to 26 percent of the total (Enache, 2021). Technological progress has contributed to the expansion of the sharing economy and the gig economy, which has significantly changed the employment pattern and necessitated changes to traditional tax systems designed primarily for permanent full-time employees (Bulba et al., 2021).

In addition, the increase in online transactions and trade on the Internet complicates accounting and collection of consumption taxes, particularly the value-added tax. The main preconditions for revising tax policy in the world are the crisis state of public finances in most countries. Due to the COVID-19 pandemic, government spending has increased significantly in almost all countries. In 2020, compared to 2019, government spending in the EU increased by 3% which amounted to on average 53.4% of GDP. The most expenditures per year increased in Greece (by 6.6% and made up 60.7% of GDP), Belgium (by 5.3%) and Croatia (by 6.1%) (see Figure 1).

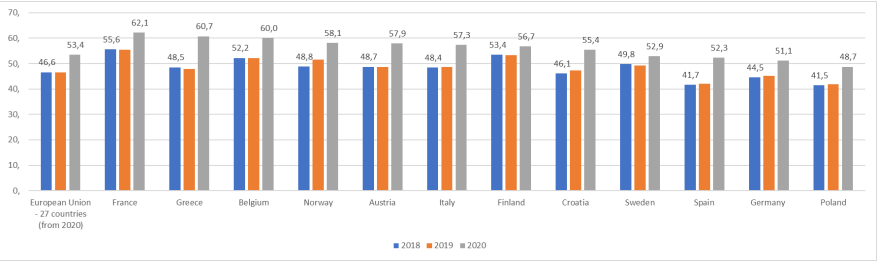

Figure 1. Total general government expenditure (Percentage of gross domestic product (GDP).

Source: (Eurostat, 2021c).

Due to rising government spending and declining tax revenues, public debt and its share in GDP have grown significantly in almost all countries. In the EU, the average public debt-to-GDP ratio has risen from 66.3% to 90.7% over the last 20 years (see Figure 2).

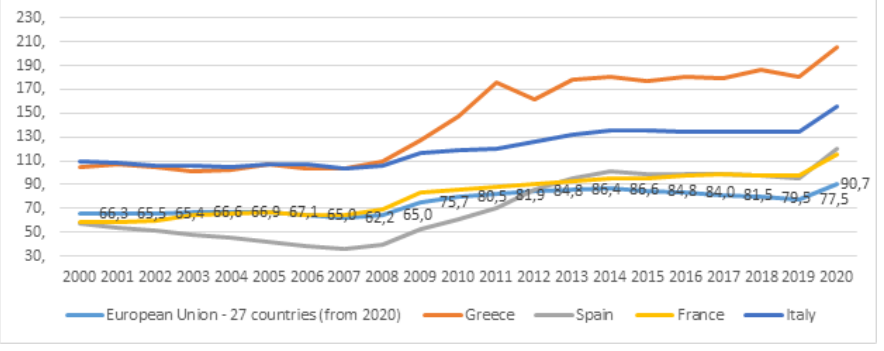

Figure 2. Government consolidated gross debt Percentage of gross domestic product (GDP).

Source: (Eurostat, 2021a).

Then considering the factors that cause a significant change in tax policies both at the global level and at the level of individual countries, due consideration when implementing tax policy and mitigating negative consequences through digital decisions. The main current trends in taxation are:

1. Businesses are becoming more mobile and global.
2. The age structure of the population is changing.
3. The importance of energy and environmental factors is growing.
4. The economy is becoming more virtual and less material.
5. Employment is becoming more flexible.
6. Inequality of households' income is growing (Enache, 2021: 3).

Prepotent to note that the world is experiencing a trend toward ageing populations. This equates to fewer people being in the workforce who will be subject to taxation than those who expect pension benefits. In 1950 the average age of the population in the world was 23.6 years (in Europe - 28.9 years) and compare to the average age is 30.9 in 2020 (42.5 - in Europe) (United Nations, 2021). In the EU, the share of the population over 65 has increased over the last 10 years by 3%, in particular: Finland (5.3%), Poland (4.6%), the Czech Republic (4.6%) and Slovakia (4.2%) (Eurostat, 2021b).

The growth rate of the population aged 65+ per 100 population 15-64 has a threatening trend, by 2025 this indicator will increase almost twice, up to 16%. In Europe, almost 30% of the population is now over 65 years of age from the population aged 15-64, and by 2100 this figure will increase to 55%, especially significant this figure is projected to be in countries such as: Albania (104.1%), Italy (70.3%), Greece (67.8%). Already, these countries face significant increases in pension payments and labor market crises, and their governments are forced to revise public pension systems and raise the retirement age (United Nations, 2019).

Population ageing is a global trend, so it is important to change educational policy, implement adult education and implement lifelong learning programs e.g. in Austria, adult learning is encouraged by significant tax benefits, tax credits, and reduced working hours, or by receiving 55% of salary leave (CEDEFOP, 2021).

The ageing of the population is a global trend, so it is important to change educational policy now, to introduce education for adults and to implement lifelong learning programs e.g. in Austria, adult education is stimulated by significant tax benefits, tax credits, reimbursement programs and reduced working hours or obtaining study leave with the preservation of 55% of salary (CEDEFOP, 2021).

The growth of income inequality also has a negative impact on the economy. As such in the future capital and not labour, should become the basis of taxation. Today, income inequality is growing every year: 1% of the population receives 11.7% of total income (in Eastern Europe this percentage is 13.4%) (WIID, 2021). Within the top percentile, the world's

richest eight people have as much wealth as 3.6 billion people. This uneven distribution of wealth raises concerns about income tax policies.

Most developed countries are already aware of this problem and are now adopting legislation to reduce the offshoring of income and make it impossible to avoid taxation, particularly by large corporations. It is estimated that almost 8% or 7.6 trillion dollars of global financial wealth are in offshore centers, and the fight against such practices has already begun in most countries. However, it should be remembered that in a globalized world, the unilateral introduction of capital taxes can lead to capital flight from the country (McKinsey and Company, 2020). Therefore, facilitating the control of financial flows through digitalization may be a reason to rethink the policy on taxation of capital sources.

Most OECD countries collect most taxes from their labour and capital taxes back in 2019. If we compare the average sources of tax revenues in 2019 and 1990, the biggest changes in the structure took place in personal taxes (decrease from 29.9% to 24%), with a simultaneous increase in the share of corporate taxes and social insurance (see Figure 3). Tax policy differs significantly from OECD countries, and it would be fair to say that there is no universal effective tax system in the world that would suit all. The largest share of tax revenues in % terms regarding GDP is in Denmark (46.6%), France (44.9%) and Sweden (42.8%) (Compare your country, 2021).

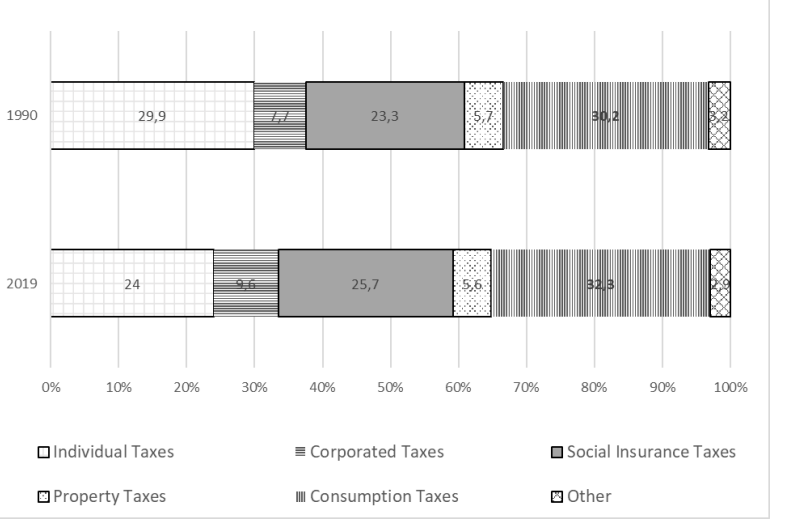

Figure 3. OECD Tax Revenue Sources, 2019 and 1990.

Source: (Compare your country, 2021).

It is also possible to note an increase in the share of taxes collected at the national level in OECD federal countries i.e., from 50.6% in 1975 to 53.4% in 2019. This compared to unitary countries the opposite applies i.e., a decrease in the share of local taxes and an increase shares of social insurance funds. This indicates the formation of a universal tax policy, which is no longer tied to the budget system of the country (OECD, 2020).

Another important challenge today is global climate change, which demands carbon emissions reduction and incentives through tax policy for environmental business. Increasing environmental taxes encourages citizens and businesses to consider the environmental consequences of their activities. As a result, less carbon goods and services will be consumed, and businesses will move to low- or zero-carbon production.

Without an emissions tax, producers and consumers will not properly consider the harmful effects of CO2 emissions. In addition, social and tax pressures will push businesses to develop clean technologies and create a negative attitude towards polluting enterprises. It is pertinent to note that all Member States of the European Union has been in the Emissions Trading System (EU ETS) since 2005.

During 1990, Finland became the first country in the world to introduce a carbon tax. But CO2 taxation is most effective if it is implemented at the international level. The introduction of a tax only at the national level can significantly undermine the country's economy. Today's relatively low prices and the level of taxation in the initial period are intended to give companies time to reduce emissions to implement green technologies. Carbon tax initiatives are now being implemented in 64 countries and covering 21.5% of global emissions (OECD, 2019).

Such global trends have led to a fundamental review of tax policies, particularly tax sources e.g., new taxes, such as automation taxes, replacing workers, or global wealth taxes, can be introduced.

The tax on automation is becoming a popular subject of public discussion. Many countries have stimulated innovation through tax credits, accelerated automation, and preferential taxation. However, only now they are beginning to realize the link between innovation, social protection, plus jobs and automation. Nobel laureate in economics Robert Schiller also noted that the automation tax may be a more politically acceptable type of taxation for those who earn high incomes and are a natural part of government policy to overcome inequality (KPMG, 2021a).

There are several options for introducing an automation tax and some countries already use this tax. One option is to reduce tax benefits for capital investments or increase VAT on the purchase of robotic technologies. Also, interestingly is the idea of tracking the number of jobs in the company and then correlating them with the results of the activity. In Spain, this

resulted in the trade union offering companies to make social insurance contributions on behalf of employees who are replaced by automation (KPMG, 2021b).

For capital taxation, it is possible to introduce a national tax on global wealth, which would be calculated considering all assets both inside and outside the country. A successful example of tracking all foreign accounts of U.S. residents is The Foreign Account Tax Compliance Act (FATCA), which has been applied since July 1, 2014. It is also proposed in the United States to increase funding for the US Internal Revenue Service and to conduct mandatory inspections of a certain population of highly paid individuals (PWC & WBG, 2020).

Also requires changes in the taxation policy under conditions of digitalization and automation of labor, which is projected to reduce the number of jobs and significantly change the structure of the labor market. Automation can reduce the demand for low- and middle-skilled workers and at the same time increase the demand for highly skilled workers and their wages. Therefore, it is already necessary to prepare society as a psychologically and infrastructure for education throughout life and activity in conditions of flexible employment (KPMG, 2021a).

In the future, we can predict an increase in self-employment, the conclusion of employment agreements for short periods, remote work of employees. And if we do not change our approaches to determining income and taxation now, most countries will be forced to raise taxes and increase requirements for state aid recipients very soon.

In this regard, it is advisable to develop requirements for accounting for income from non-standard employment of workers. This would apply when paying their due taxes to guarantee them social protection and shift the focus from labour taxation to taxation of capital sources (Karthik et al., 2019).

Due to the COVID-19 pandemic, the volume of cross-border electronic commerce associated with Internet trade has increased considerably. This has made it much more difficult to identify and tax such transactions, and as such in the traditional model of taxation they are very difficult to trace. As national tax systems have hardly changed to meet the requirements of the new digitalized world. A global approach and close cooperation between countries is needed to develop common approaches to e-commerce taxation (OECD, 2021).

The main problems of e-commerce taxation in Ukraine have similar problems regarding taxation of this market segment in the USA and the EU:

1. Taxation of digital (intangible) products and online services in the B2C and C2C segments. The existing VAT tax instruments of non-

residents do not work for the digital economy e.g., payments for Facebook and Google advertising services are made through card accounts of individuals, i.e., such transactions are not subject to control and as such the loss of VAT revenues to the budget is quite significant.

Electronic trading is difficult to control because the identity and location of the buyer can be established only according to the bank card. Additionally, if the payment is made through an electronic payment system, such as Web-money this makes it even more difficult. As such, there is a need for new tools that would allow tax authorities to identify and track transactions on the Internet.

2. Imperfection of Ukrainian legislation on tax regulation of e-commerce. Currently, the legislation does not clearly define electronic commerce, Internet trade and other terms, even though they are widely used in official documents. At the legislative level, there is no classification of digital products, i.e., it is not defined whether to classify them as goods or services. To regulate the taxation of digital goods, it is necessary to amend the relevant articles of the Tax Code, which concern the objects of taxation in general and the objects for VAT collection (Bodrov, 2018).

In addition, the main areas for increasing tax revenues may be improving the administration of taxes, their diagnosis, the use of big data technology to assess revenues. The use of the basics of behavioral economics in tax policy, considering economic, social, and environmental impacts, also hides great opportunities (Sentance Andrew, 2020).

Currently, the issue of developing methods of taxation of the digital economy is acute at the global level, so it is important to cooperate between countries to expand the tax base and develop international tax legislation. For the first time, tax challenges in the digital age have been identified as one of the main ones in the OECD / G20 Project on “Base erosion and profit shifting” (BEPS) in 2015.

In March 2018, the Taskforce on the digital economy (TFDE) identified the tax challenges posed by digitalization and highlighted the need for a global solution. BEPS introduced new rules that include minimum country reporting standards, giving tax authorities a more comprehensive view of enterprise operations at the global level. The BEPS also presents recommendations for changes in the tax collection for consumption in cross-border transactions.

The First and Second Pillars of BEPS will support global investment. More notably, their proposals are aimed at increasing tax certainty and the efficiency of global capital allocation by increasing the importance of non-tax factors (infrastructure, level of education, wage costs). Pillar One aims

to adapt the international tax system to the digital environment through significant changes to the rules that apply to the taxation of business profits.

The estimated effect of the implementation of BEPS is for: Pillar One - 0.2-0.5% of global tax revenues (or 5-12 billion dollars); Pillar Two 1.9-3.2% (or $ 47-81 billion). Developed countries receive the most revenue from the implementation of BEPS, as they have the major share of large corporations that erode their income and remove it from taxation (OECD, 2021). The EU Commission plans to introduce a digital fee no later than January 1, 2023 and has already developed a road map for the implementation of this fee.

Ukraine has joined the world trends and today is at the stage of implementing the minimum standard of the BEPS plan. Several bills are being drafted and are currently to be considered by parliament (Ministry of Finance of Ukraine, 2017).

Using the capabilities of digital platforms for doing business has contributed to the spread of the so-called sharing economy (Sharing Economy), in which entities gain access to something in the markets on a peer-to-peer (P2P) basis. One of the defining characteristics of the P2P economy is that the interaction occurs among many indivisible, disparate and independent economic units.

This contributes to the fact that activities through the platforms are virtually unregulated by the state and are difficult to monitor by the tax authorities. Such economic relations are taxed less than other types of business due to the use of preferential rates or regimes, or simply because entities do not show their profits (Tochylina, 2019).

At the same time, three-quarters of employees of digital platforms are not registered as self-employed and do not pay taxes. In the online sector, this figure is higher than in other areas of the economy. Most employees who perform tasks on digital platforms qualify as “freelancers” or “independent contractors” on digital platforms, which means that they go beyond labour law. Almost half (45%) of them is convinced that they do not need to officially register their activities with government agencies (tax and others) in order to work on Internet platforms. Only 14% are sure that it is necessary to register, another 8% believe that it is most likely necessary to register (Aleksynska et al., 2018).

Thus, within the framework of legal regulation, there should be legalization of digital labor relations, the status of all participants of social and labor relations should be equalized: both those who work on permanent or temporary employment, and those who are involved in remote forms of employment (freelance exchanges), crowdfunding platforms, professional social networks, groups and pages in social networks, career sites or sections of companies and organizations, outsourcing, etc.) (Kokhan, 2021).

From January 1, 2019, the EU introduced changes to the VAT on digital services. The OECD has also introduced new global tax reporting and developed Model Reporting Rules. Under the new proposed procedure, digital platforms (MRDP) should collect information on the income of entities that offer housing, transport and personal services through online platforms and transmit information to fiscal authorities (KPMG, 2021b). In 2021, 36 countries have agreed to introduce a corporate tax rate of at least 15% for international corporations from 2023; 136 countries and jurisdictions, which account for more than 90% of world GDP, have agreed to this reform. These innovations will allow you to pay fair shares of taxes, regardless of the location of the business and the place of profit (PWC & WBG, 2020).

The UN is also developing recommendations for global taxation. Thus, the UN Tax Committee published a draft proposal for the taxation of automated digital services, namely: online advertising services; internet intermediary platform services; social media; digital content; cloud computing; sale or other alienation of user data; standardized online teaching services. UN continues to work to improve the provisions of the digital tax treaty (KPMG, 2021b).

With the emergence of new technologies resulting from the development of the digital economy, new tax problems arise, which should also be addressed. One of the main modern challenges is the regulation of the circulation and accounting of cryptocurrencies, taxation, and payments in digital currencies (cryptocurrencies). In this regard, the OECD / G20 Inclusive System adopted in October 2020 the Report "Taxation of Virtual Currencies: A Review of the Tax Regime and New Tax Policy Issues". Implementing OECD standards for the effective collection of VAT on online sales of goods, services and digital goods and abandoning its plans for a digital service tax (DST) based on turnover (OECD, 2021).

Ukraine is currently also focusing on cryptocurrency taxation issues. According to experts, it is more appropriate to talk not about cryptocurrency, but about cryptocurrency as a type of virtual asset that exists exclusively in the system of digital data accounting in the form of a record with an identifier of information. Accordingly, a draft Law of Ukraine "On Virtual Assets" has been developed, according to which virtual assets and their turnover are not subject to VAT, taxation is carried out at 5% of the difference between the purchase and sale of a virtual asset.

Given the global trends in the transition from a raw materials economy to high-tech production and the introduction of Industry 4.0, the study of the digital economy in Ukraine is extremely relevant. The rapid development of new technologies, global informatization intensifies the process of digitalization of Ukraine's economy, considering the focus on international, European and regional cooperation in order to integrate Ukraine into the EU, access to European and world markets.

Institutional and legal registration of the development of the digital economy in Ukraine began in 2013, when the Cabinet of Ministers issued an Order "On approval of the strategy for the development of the information society in Ukraine." In 2015, Ukraine joined the Declaration of the First EU Eastern Partnership Ministerial Meeting on the Digital Economy, in which the digital economy was recognized as an area of untapped potential for both the EU and partner countries. The need to integrate the digital markets of the Eastern Partnership countries into the single European space is caused by the emergence of the initiative "Harmonization of Digital Markets (HDM)", in the implementation of which Ukraine is also involved.

It should also be noted that starting from 2015; a legal framework is being formed that reflects certain aspects of digitalization processes in Ukraine. These are the Law of Ukraine "On Electronic Commerce", the Law of Ukraine "On Electronic Trust Services", the Law "On Electronic Digital Signature" and other bylaws, incl. about e-money, e-government, etc.

Recently, the number of services provided online in Ukraine has increased significantly, including in the field of taxation. Thus, an electronic office of the taxpayer has been created, which allows the taxpayer to work with the tax authorities in real-time. Such provision of administrative services to taxpayers while removing them from direct contact with civil servants is a means of preventing corruption in the tax authorities.

In Ukraine, the number of citizens who prefer the electronic submission of declarations of property and income is gradually growing. Submission of electronic reporting significantly simplifies the work and has many benefits for taxpayers, including savings in working time, financial costs, the efficiency of processing and confidentiality of information, notification of existing budget and tax arrears (Bodrov, 2018:34).

Since 2015, electronic administration of value-added tax has been introduced at all levels. Thus, it is now possible to automatically control the value chain. By analyzing electronic VAT returns, it is possible to determine the tax risks of taxpayers and prevent illegal deductions and refunds for this tax. The introduction of remote digital control tools will improve the quality of administration of taxes, fees, payments (Dmytryk, 2021).

To promote digitalization in Ukraine, a number of digital information platforms aimed at providing public services online have been created and are successfully operating. Platforms for the provision of state and municipal services are operating successfully. More than 100 electronic services are currently available for citizens and businesses on the Government portal. In February 2020. The public digital application "Action" has appeared in the public domain, which provides transparency, simplicity, the convenience of providing public services to citizens and businesses online (Leheza *et al*., 2021)

The Action service provides an electronic display of the information contained in digital documents during registration procedures, making changes or obtaining information from the State Register of Individuals (E-baby - state registration of childbirth, ID14 - obtaining a passport of a citizen of Ukraine for the first time). Also, among the services are those related to taxation: digital registration number of the taxpayer, registration of an individual entrepreneur, one-time assistance, income statements and much more.

According to experts, the share of the digital economy in the GDP of the world's largest countries by 2030 will be 50-60%. In Ukraine, this figure can reach 65% of GDP (subject to the implementation of the forced scenario of the digital economy in Ukraine) (Cabinet of Ministers of Ukraine, 2021).

The need to form the digital economy in Ukraine is declared in the Order of the Cabinet of Ministers "On approval of the Concept of development of the digital economy and society of Ukraine for 2018-2020 and approval of the action plan for its implementation" №67 of January 17, 2018. (Cabinet of Ministers of Ukraine, 2018). Sustainable development, as well as a tool to increase the efficiency, productivity, and competitiveness of the economy. In 2019, the Verkhovna Rada Committee on Digital Transformation was established, as well as the Ministry of Digital Transformation of Ukraine.

The draft Law "On Amendments to the Tax Code of Ukraine to Stimulate the Development of the Digital Economy in Ukraine" was also adopted as a basis. Adoption of the bill will stimulate the development of the information technology industry, increase its competitiveness, as well as increase the revenue side of local budgets and social funds through a fiscal maneuver to introduce a special tax regime for the payroll.

It is proposed to install for IT companies for the period from January 1, 2021, until December 31, 2030. features of taxation: tax burden on salaries of employees at the level of 10% (5% of personal income tax (instead of 18%) + 5% of the single social contribution (instead of 22%) + exemption from military duty); the income of the industrial entity is subject to the rate of income tax with a coefficient of 0.5, which is 9% (Verkhovna Rada of Ukraine, 2021).

The digital economy also allows for improved administration and tax collection. A single information system for transactions and invoices will allow for electronic audits and automate the process of paying taxes. Close cooperation between taxpayers and tax administrations in the real-time system can provide significant benefits, including increased control over taxpayers' data and the prevention of fraud. Some countries already use blockchain technology for tax administration and customs control.

Governments have already begun to introduce several new types of taxes: taxes on technology, taxes on data, taxes on carbon emissions, and

others. The introduction of new taxes requires tax authorities to create and integrate databases and their analysis. Already, global cloud data is growing by 15% every year. Virtually all economies reduce the use of cash, and non-cash transactions are easy to administer and verify for tax purposes. In the digital economy, new tools, and new ways of working need to be developed (Trusova *et al.*, 2021).

Support and development by the tax authorities of advanced analytics, machine learning, and artificial intelligence should be built into all operations. Data is changing constantly and rapidly, so tax authorities must constantly update their approaches, introduce new technologies.

Tax policy and appropriate responses of states should be aimed at supporting the income of individuals and enterprises through measures such as deferred payments and temporary reduction of rates. There is a need for broad international cooperation to overcome the crisis, including through rising debts from developing countries, and international cooperation to prevent tax evasion and promote tax transparency. There is a clear role for taxation in securing equity and promoting the macroeconomic incentives needed to sustain growth.

The tax authority itself, which may become invisible in the future, also needs to be changed. This is one possible scenario that could develop from the support and day-to-day implementation of cashless payments, electronic cash registers and digital invoicing tools, which will be linked directly to accounting software and digital tax records.

In the future, companies will be able to replace accountants with cloud accounting software with an automatic function of accrual and payment of taxes. In the future, almost all business operations will involve advanced analytics and artificial intelligence. Moreover, because data will change rapidly and constantly, tax authorities will need to have high-quality hardware, software, and increase the number of programmers and introduce new technologies faster than ever before.

The structure of employees in the tax authorities must also undergo significant changes, data analysis experts may occupy more than 50% of the total number of employees, which already requires a review of personnel policy. Usually, highly qualified fintech specialists are reluctant to go to the public sector of the economy, which is now characterized by inflexibility of working hours and low wages.

Tax policy in the digital age must be based on transparency, accountability, and the main factor in implementation is trust, which is low in Eastern Europe. Business and public confidence in the state can be increased by developing online platforms for open state databases, increasing their transparency, and guaranteeing the protection of personal data. The formation of databases allows for segmentation of payers and the

degree of risk; to detect fraud, increase confidence in the country, increase its investment attractiveness.

Conclusion

It is already clear that almost all countries need to change their tax policies in line with the new requirements of the digital economy. The main key adaptation measures are:

1. Increasing communication, support, and information activities. During the period of remote work, the tax authorities should spend more time on information work on innovations in tax policy, consultations for different groups of taxpayers.
2. Development of measures to reduce shadow incomes and introduce new approaches to determining the real amount of income. This could be an increase in taxes on expenses, the introduction of new environmental taxes or additional property taxes. At the same time, providing a system that fairly and efficiently redistributes income.
3. Digitization of tax authorities. Expansion of digital services by tax authorities. Stimulating the digitalization of enterprises through taxation (KPMG, 2021a: 2).
4. The new tax rules should be based on net taxation, avoid double taxation and be understandable. It is necessary to adapt the international income tax system to new business models by changing the rules of profit distribution and relationships.

The digital transformation of tax authorities requires governments to consider many factors: the maturity of the financial and digital markets, the security of transactions and the banking system, infrastructure, security, and data protection. Moreover, especially a high level of trust and willingness to pay taxes by businesses and individuals.

It is also possible to enter business contracts with online platforms, which would integrate all transactions and payment data using special accounting software with automatic generation of tax reporting and submission of applications and payments. This approach automates the payment of taxes, makes it impossible to evade them and provides an opportunity to conduct all inspections online.

Thus, the realities of the digital economy determine the need for broad international cooperation to prevent tax evasion, promote tax transparency and develop new approaches and software. The digital economy offers new opportunities, but at the same time causes some problems in the field of taxation.

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Comparative analysis of fixed capital investments in the regions of Russia

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Abstract

The aim of the research was to assess the specific levels of fixed capital investment per capita in all regions of Russia. The research was based on official 2019 statistics on the volume of fixed capital investments in 82 regions of Russia, as well as data on the population. In the research, the analysis of clusters associated with the unification of the objects studied in relatively homogeneous groups based on the study of the values of the compared indicators was applied. The normal distribution function was used in modelling to estimate the distribution of specific values for most regions. The following results and conclusions were obtained: it has been shown that the formation of five groups is optimal. In addition, it was shown that in 2019 nine regions were characterized by an extremely high level of investment due to the tasks of their strategic development to meet federal challenges. They also identified regions with relatively low values of specific investments in fixed assets. Everything indicates that specific investment values have a significant differentiation in several regions of Russia.

Keywords: investments; fixed capital; regions of Russia; cluster analysis; normal distribution functions.

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Análisis comparativo de las inversiones de capital fijo en las regiones de Rusia

Resumen

El objetivo de la investigación fue evaluar los niveles específicos de inversión de capital fijo per cápita en todas las regiones de Rusia. La investigación se basó en las estadísticas oficiales de 2019 sobre el volumen de inversiones en capital fijo en 82 regiones de Rusia, así como los datos sobre la población. En la investigación se aplicó el análisis de conglomerados asociado a la unificación de los objetos estudiados en grupos relativamente homogéneos basados en el estudio de los valores de los indicadores comparados. La función de distribución normal se utilizó en la modelización para estimar la distribución de valores específicos para la mayoría de las regiones. Se obtuvieron los siguientes resultados y conclusiones: se ha demostrado que la formación de cinco grupos es óptima. Además, se demostró que en 2019 nueve regiones se caracterizaron por un nivel de inversión extremadamente alto debido a las tareas de su desarrollo estratégico para hacer frente a los desafíos federales. También se identificaron las regiones con valores relativamente bajos de inversiones específicas en activos fijos. Todo indica que los valores de inversión específicos tienen una diferenciación significativa en varias regiones de Rusia.

Palabras clave: inversiones; capital fijo; regiones de Rusia; análisis de conglomerados; funciones normales de distribución.

Introduction

Investments in fixed assets are aimed at the development of modern national economies (Laopodis, 2021; Karadzhova and Dichevskaya, 2014). At the same time, based on the analysis of the state of production resources and alternative options for their development, the implementation of the most effective investment decisions is ensured.

The development of investments in fixed assets is important both for states and for enterprises and organizations (Hoffman and Valderrama, 2021). Therefore, the study of their volumes seems to be an urgent area of research for both developed and developing countries. Of the greatest interest is the assessment of regional aspects of investments (Alama-Sabater and Cantavella, 2019). In recent years, Russia has formed high expectations of fixed capital investment increase. According to Russian Federal State Statistics Service (Rosstat) data, these expectations are largely becoming real, since the absolute values of such investments for the period from

2015 to 2019 increased by almost 50%, which is significantly higher than the total inflation amounted to 19% these years (Federal service of state statistic, 2021a).

The aim of our research was to assess specific fixed capital investment levels per capita in all regions of Russia. The main problem to which this study is trying to give theoretical and empirical answers is to assess the volume of investments in fixed assets in each of the regions. This study provided new information about regional differences in investment.

The information obtained will allow the government, financial and credit institutions, the public, as well as researchers to make scientifically sound decisions to support investment activity. This study contributes to the expansion of knowledge about the distribution of investment flows between regions.

1. Literature review

Scientific publications on the problems of investments in fixed assets have received significant development in the twenty-first century. It is possible to note such research reports as (Eklund, 2013; Jehiel, 2018; European Investment Bank, 2018; Rioja *et al.,* 2014). Publications in Latin American journals (Alvarado *et al*., 2017; Eustaquio Casagrande and Valvano Cerezetti, 2014; Lopez and Cardim de Carvalho, 2008; Acevedo Rueda and Lorca Susino, 2021) have made a significant contribution to the study of fixed capital investments.

The problem of regional investment activity in Russia was the focus of research in a few scientific publications. Let us consider the most relevant ones, published in 2018-2020. A brief description of these publications is given in Table 1.

Authors	Problems dealt	Period, years	Investment objects	Type of indicators
1	2	3	4	5
Starkova (2020)	Comparative analysis of investments by region, as well as investment volume indices	2014-2018	The regions of the Volga Federal District	absolute

Vorgunova and Vikharev (2018)	The volume and structure of investment flows in fixed capital, including industries and fund sources	2007-2017	Russia	absolute
Giraev (2020)	The dynamics of investment volume and structure in fixed capital considering the types of economic activity	2014-2018	Russia, the North Caucasus Federal District, Dagestan	absolute, specific
Kumaneeva (2020)	The dynamics of changes in the structure of investment activity in the sectors of the economy	2008-2019	The Kemerovo Region	growth indices
Temirbolatova (2020)	The assessment of fixed capital investments as one of the main indicators describing the development of the region	2016 - 2018	The Karachayevo-Circassion Republic	absolute
Chernenko et al. (2020)	Problems of project funding, the impact of investments on economic growth, the assessment of their volume required for the growth of the gross product	2014-2018	Russia	absolute
Golub and Kochubey (2020)	Distribution of investments in fixed capital within organizations of various forms of ownership	2016-2018	Russia	absolute

Zubova and Kruglov (2020)	The ranking of the country's subjects based on practical investments in the fixed capital development on their territories	2017	All regions of Russia	absolute
Kirichenko and Smirnov (2020)	The analysis of the interconnection between investments and the indicators of production, cargo turnover, as well as the profit accumulated by the organizations of the city	2009-2019	The city of Moscow	absolute
Grishina (2020)	The analysis of trends in the concentration of fixed capital investments in a small number of regions. Predicting proposals for spatial changes in the investment policy	2017-2018	Regions of Russia	specific
Glazyrina et al. (2018)	Consistent patterns of territorial features of investment processes	2011-2013	All regions of Russia	specific
Bashina et al. (2018)	The assessment of foreign direct investment	2000-2016	Russia, Federal Districts	absolute
Edronova and Maslakova (2019)	Own financing of fixed capital investments	2005-2016	Russia, Federal Districts	absolute

Subkhonberdiev et al. (2018)	Attracting investments to the regions of advanced development	2015-2018	The Far Eastern Federal District	absolute
Fatyanov (2019)	The impact of investment on the economic situation and development of the regions, as well as the improvement of the life quality of population	2012-2016	The Central Federal District	specific
Izotov (2019)	The impact of the investment potential of Russian regions on the level of foreign investment	2011–2017	All regions of Russia	absolute
Zabolotni (2019)	Investment enhancement due to the development of tax regulation	2018	Particular regions of Russia	absolute
Ulanova and Sologub (2019)	The assessment of investments in the agricultural sector and its main activities	2017-2018	Agro-industrial complex of Russia	absolute
Grenaderova (2019)	The assessment of the impact of investments on the sustainability of regional development	2018	Particular regions of Russia	absolute

Table 1. Scientific publications on investment activity in Russia.

According to the information in Table 1, it can be stated that the problem of studying regional investment activity is relevant in our country. However, until recently, theoretical and applied studies have paid little attention to the comparative analysis of the investments in fixed capital in

different regions of the country. In the research works where such analysis was undertaken, absolute investment values were a focus of comparison as a rule. This does not always seem logical, as the regions vary significantly in population, size, and geographical position. In this regard, it seems appropriate to conduct the analysis of regional investment activity based on the number of residents in the regions, considering the influence of other factors.

2. Methodology and design

The comparison of absolute fixed capital investment values in various regions is not regarded rational due to the regions' significant difference in their economic potential and population in particular. Therefore, we suggest using specific indicators to compare investments across the country's regions. These indicators measured regional fixed capital investment values per capita of the corresponding region.

The study included four stages. Initially, it made the original observations of the investment volume in each region of Russia as well as the region's population. Then specific investment values for every region were calculated. The second stage involved the cluster analysis of the values of specific investments by region. The third step was to assess the distribution of the specific investment values by the regions of the country. The fourth stage suggested a comparative analysis specifying the regions with maximum and minimum specific investment values.

The research was based on 2019 official statistics on the volume of investments in fixed capital in 82 regions of Russia, as well as the data on the population in them (Federal service of state statistic, 2021a; Federal service of state statistic, 2021b).

In research, the cluster analysis is associated (Feser and Sweeney, 2000; Smorodinskaya and Katukov, 2019) with the unification of the studied objects into relatively homogeneous groups based on the study of the values of the compared indicators. The k-means method used in this work in the process of successive iterations forms clusters based on minimizing the total quadratic deviation of the values of indicators for the analyzed objects from the center of each cluster.

The normal distribution function was used in the economic-mathematical modelling applied to estimate the distribution of specific values for most regions of Russia. The article represents the methodical approach (Pinkovetskaia *et al.,* 2021) for the development and use of such function to determine the average value, as well as the range of its variation across the regions.

3. The research findings and their discussion

The first stage of the research was aimed at collecting basic empirical data about the investment volumes in every region of Russia, as well as the number of inhabitants in each corresponding region. Such data fragment for eight regions is shown in the first three columns of Table 2. Column 4 contains the results of calculations of specific investment per capita values for each of the regions.

Regions	Investments, billions of rubles	Population, thousands of people	Investments, thousands of rubles per person
1	2	3	4
Perm territory	283.78	2.61	108.69
Kirov region	72.23	1.27	56.78
Nizhny Novgorod region	295.25	3.21	91.85
Orenburg region	212.04	1.96	108.02
Penza region	89.37	1.32	67.80
Samara region	293.73	3.18	92.28
Saratov region	162.12	2.44	66.42
Ulyanovsk region	79.73	1.24	64.38
...	...	...	...

Table 2. The extract from the basic data and specific investment by region.

The clyster analysis of specific investment values by region with the help of the Statistica program was undertaken at the second stage of the research. Using the k-means method with eleven iterations it seems optimal to build five clusters. The results of this cluster analysis are shown in Table 3.

Cluster	The average investment value, thousands of rubles per person	Number of regions
1	2	3
First	251.81	four
Second	499.92	five

Third	147.15	thirteen
Fourth	97.29	twenty-six
Fifth	60.46	thirty-four

Table 3. The results of the cluster analysis.

The verification proved the high quality of the cluster analysis, since testing showed that the value p = 0.000, which is less than not only 0.05, but also 0.001. This indicates the highly significant differences of all clusters in all their parameters.

Let us consider the main results of cluster analysis. The data in column 3 of Table 3 show that the first cluster includes four regions, the second cluster – five regions, the third cluster - thirteen regions, the fourth cluster - twenty-six regions and the fifth cluster - thirty-four regions.

The mean values of the indicators for the five clusters are given in the second column of Table 3. The mean differences of the nearest clusters are as follows: between the fifth and fourth clusters it is 36.83 thousand rubles/person, between the fourth and third - 49.86 thousand rubles/person, between the third and first clusters it is significantly more - 104.66 thousand rubles/person, between the first and second clusters it equals 248.11 thousand rubles/person.

Thus, the centers of the third, fourth and fifth clusters are located relatively compactly, and the centers of the first and second clusters are at a considerable distance from them. Taking this into account, one can conclude about the extremely high specific investment values in these nine regions and their significant differences from other regions in terms of specific investments. The remarkable thing is that the first and second clusters comprise only nine regions, which corresponds to 11% of the total number of subjects of the country.

The first cluster is made up of Leningrad region, Murmansk region, Magadan region and Moscow city. Amur region, Sakhalin region, Tyumen region, republic of Sakha and Chukotka autonomous area are parts of the second cluster.

In the eight regions composing the first and the second clusters, fixed capital investments relate to the implementation of the federal strategic programs.

- In Tyumen and Magadan regions, the programs are related to the development of mining and processing complexes/industries.

- In Amur region – the development of transport and energy infrastructure, construction of gas processing enterprises.
- In Leningrad region – the development of port and industrial infrastructure.
- In Murmansk region - the development of the mining complex, shipbuilding, as well as a transport hub.
- In republic of Sakha and Chukotka autonomous area - development of mining enterprises.
- In Sakhalin region – the development of the oil and gas complex, transport and energy infrastructure.

Large specific investments in the ninth region (Moscow) are conditioned by its status as the only metropolis in the country. The main areas of fixed asset investment in Moscow were the development of transport infrastructure, the creation of a comfortable urban environment and renovation.

The results of the cluster analysis indicate that in the nine regions there are extremely high values of specific investments, compared with the other (73) regions. Therefore, the third stage of the analysis involved the assessment of specific investment values in these 73 regions belonging to the third, fourth and fifth clusters. In the course of the computational experiment, economic and mathematical modeling based on empirical data was carried out. The model that describes the distribution (y) of the of fixed capital investment values per capita (x, thousands of rubles) is given below:

$$y(x) = \frac{1551\ .25}{33\ .91 \times \sqrt{2\pi}} \cdot e^{\frac{-(x-89\ .02)^2}{2 \times 33\ .91 \times 33\ .91}}.$$

The high efficiency of this normal distribution function was confirmed during Shapiro-Wilk, Pearson and Kolmogorov-Smirnov criteria testing.

The parameters of the normal distribution function support the conclusion that the average fixed capital investment value in 73 regions of Russia is 89.02 thousand rubles per capita, and the value of the standard deviation is 33.91 thousand rubles per person.

Thus, it can be concluded that there is a significant differentiation of indicators in 73 regions.

The next stage involved identification of the regions with the minimum values of specific investments. At the same time, the minimum values are regarded to be less than the difference between the average value for 73 regions and the corresponding standard deviation. The results of this

analysis showed that the minimum values (from 37.26 to 55.11 thousand rubles/person) were marked in such regions as the Ivanovo, Kostroma, Kurgan, Bryansk, Pskov regions, Mari El, North Ossetia-Alania, Ingushetia, Kabardino-Balkaria, Karachayevo-Circassian, Chuvash and Chechen republics, as well as Altai territory. These regions need special attention to the increase of investment in the near future.

Conclusion

The analysis fulfills the purpose of the study to assess the levels of fixed capital investment in the regions of Russia in 2019. The conclusions are of academic novelty and originality. They are as follows:

1. The methodology for assessing specific investments indicators per employee in each region with help of the cluster analysis and the normal distribution function is presented.
2. The cluster analysis of the of specific investment values in 82 regions of Russia was carried out.
3. The formation of five clusters is proved to be optimal.
4. It was shown that in 2019 nine regions were marked with extremely high level of investment due to the tasks of their strategic development to tackle the federal challenges.
5. The regions with relatively low values of specific investments in fixed assets have been identified.
6. The specific investment values are proved to have a significant differentiation in various regions of Russia.

The results of the work have a certain theoretical and practical significance for the government, regional and local authorities. The methodological approach to assessing an investment level presented in the article can be used in further research. The knowledge gained is of interest and can be used in educational process at universities.

There were no restrictions on empirical data in the research process, since information from all regions of Russia was considered.

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Peculiarities of personnel market implementation in modern conditions: trends and innovations

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Abstract

The article is devoted to the study of the organization of personnel marketing at Ukrainian and foreign enterprises, the level of development of countries in the field of personnel marketing, as well as the popularity of this type of management activity. The purpose of this research project is to analyze the differences between foreign and domestic experience in the field of personnel marketing. Also in the study, based on the analysis of theoretical developments and factors that have a practical impact on the implementation of personnel marketing in modern conditions, the most important elements of this concept are proposed. Particular attention paid to increasing the loyalty of personnel, which has a dominant influence on the results of the enterprise. Concluded that for modern Ukrainian enterprises, the concept of personnel marketing can be fully implemented only through rethinking the consequences for all areas of work with personnel, reflected in goal setting, staff motivation and ensuring the social responsibility of the enterprise.

Keywords: staff; personnel marketing; personnel training; strategic management; HR-budget.

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Peculiaridades de la implementación del mercado de personal en condiciones modernas: tendencias e innovaciones

Resumen

El artículo está dedicado al estudio de la organización del marketing de personal en empresas ucranianas y del mundo, el nivel de desarrollo de los países en el campo del marketing de personal, así como la popularidad de este tipo de actividad de gestión. El propósito de este proyecto de investigación es analizar las diferencias entre la experiencia nacional y extranjera en el campo del marketing de personal. También en el estudio, a partir del análisis de desarrollos teóricos y factores que inciden en la práctica en la implementación del marketing de personal en condiciones modernas, se proponen los elementos más importantes de este concepto. Se presta especial atención al aumento de la lealtad del personal, que tiene una influencia dominante en los resultados de la empresa. Se concluye que, para las empresas ucranianas modernas, el concepto de marketing de personal solo se puede implementar completamente si se revisan las consecuencias para todas las áreas de trabajo con el personal, lo que se refleja en el establecimiento de objetivos, la motivación del personal y la garantía de la responsabilidad social de la empresa.

Palabras clave: personal; marketing de personal; gestión estratégica; formación de personal; presupuesto de recursos humanos.

Introduction

The labor market does not stand still and is accompanied by constant changes. At the moment, the labor market in Ukraine is affected by the crisis. The crisis is forcing employers to look in a new way at the policy of attracting and retaining personnel. In the context of the financial, economic and political crisis in Ukraine, more and more companies are looking for new, innovative forms of marketing that would ensure their stable operation and development in an unstable situation and increased competition in the market. The use of marketing approach in the management of activities at the enterprises of Ukraine is an important factor in increasing their competitiveness (Orlov, 2015).

According to surveys of companies operating in the internationalized Ukrainian market, the level of use of active tools of international marketing among domestic companies is very low and meets the needs of active business behavior and high competitiveness. This is confirmed by previous

studies by Ukrainian marketers, who show that about a third of domestic companies try to sell existing products without stimulating them through marketing activities, and only about 20% seek to work in markets and segments given the long-term goals of the company, its international activities (Kovalchuk and Bura, 2015).

At the stage of increased competition, it is important to positively form the HRbrand of companies, which is an essential condition for the development of any organization. Thanks to a positive brand, companies are significantly reducing their recruiting funds, employee loyalty is ensured, and staff turnover is minimized. In this regard, Ukrainian organizations began to pay more attention to such a new human resource management tool as personnel marketing.

By using this tool, companies can achieve an increase in the real return and productivity of staff without raising any additional funds. Personnel marketing is a whole philosophy of human resource management. Its directions in the organization are determined by a number of factors, both external – the development of technology, the situation on the labor market, social needs, current legislation, the personnel policy of competitors, and internal – the goals of the organization, financial resources, human resources.

Ukrainian employers today still poorly understand their need for personnel marketing, mistakenly believing that this is the essence of manipulation. Unfortunately, many enterprises have a consumer attitude towards personnel, which is expressed in non-observance of their social and economic rights. The evidence is such as chronic wage arrears that push workers to the brink of poverty; violation of ethical norms when checking employees at the checkpoint, when implementing total video surveillance, when using a polygraph; non-payment of overtime work with an actual 12-hour working day; differentiation of the level of remuneration and career prospects, depending on the degree of informal proximity to the head; discrimination of certain categories of job seekers when hiring.

This attitude towards personnel, in turn, led to a significant lag in our country in labor productivity, to a noticeable outflow of highly qualified specialists abroad, to an increase in demotivation, absenteeism and staff turnover, to an increase in ineffective personnel costs and, in general, to the devaluation of the role of HRmanagement –systemic management decisions related to basic organizational changes.

Despite this, we are seeing a growth in organizations looking to build long-term, mutually beneficial relationships with their staff. The main prerequisites for this process, in our opinion, were the increased competition in the market (each employee can potentially reduce the competitive advantages of this organization by his departure to a

competitor), the diffusion of organizational and managerial innovations on the part of Western companies that have opened their representative offices in Ukraine, as well as the adoption of a number of laws limiting the arbitrariness of employers.

Unfortunately, today there is almost no strategic vision of marketing activities, and its role in the effective functioning of the enterprise is underestimated. Not enough attention has been paid to the issue of marketing effectiveness. As a result of the presence of a large number of brands and the free treatment of them, a class of marketers was formed, whose methods of work do not meet the requirements of the modern market. Under such conditions, it is important to find ways to improve the implementation of their chosen marketing strategies based on the study of the nature and features of their implementation in modern conditions, a detailed analysis of problems faced by enterprises in applying the latest marketing strategies.

1. Methodology of the study

The methodological basis of the article is a set of general scientific principles, methods and techniques of scientific research, the use of which is due to the purpose and objectives. The research is based on the use of such methods as: abstract-logical method (at generalization of theoretical positions and formulation of conclusions in the field of personnel marketing); dialectical method (in identifying the relationship between the elements of the conceptual structure of competition, proving the existence of links between competition and consumer satisfaction, etc.); method of historical analysis and theoretical generalization (in the study of methodological approaches to the development of management decisions, competitive strategies and their typification); method of comparison (in the study of scientific schools of strategic management and personnel management, in the analysis of competing companies for marketing factors of competitiveness); expert method and ranking (when assessing internal and external factors of competitiveness, determining the intensity of competition); methods of marketing research (in the analysis of the market of services, staffing; in the analysis of internal factors of competitiveness, determination of indicators of efficiency of marketing competitive strategies); system approach (when developing the algorithm for developing and implementing a marketing competitive strategy in general and staff marketing in particular); analysis and synthesis (in the development of hypotheses and their experimental testing).

2. Analysis of recent research

The issue of marketing management, marketing strategies has been studied by many scientists, such as N. Kudenko (Kudenko, 2010), P. Kulikov (Kulikov, 2012), P. Orlov (Orlov, 2015), Kiyan (Kiyan, 1995), P. Kotler, G. Armstrong, J. Sauders, V. Wong, (Kotler *et al.*, 2007), E. Gramatskyy (Gramatskyy *et al.*, 2020) and others. Insufficient attention of scientists is paid to the issues of effective realization of the potential of strategic marketing.

The purpose of the article is to deepen the theoretical and methodological approaches, substantiate and generalize the world experience of personnel management and develop practical recommendations for its practical use in practice by domestic enterprises in modern conditions.

3. Results and discussion

Personnel is the main intellectual resource of the enterprise, which generates new ideas and products. The company's employees are involved in establishing relationships with a wide range of contractors, because it is the staff that determines not only strategic decisions, but also the company's ability to compete in the market (Orlov, 2015).

The HRmarketing concept has strengthened its position. At the end of the last century abroad, both in theory and in practice. This was facilitated by the following primary factors: mental transformations (revaluation of values) of the working-age population, a one-sided approach to the choice of profession and place of work, demographic changes, the lack of highly qualified specialists and managers, a new profile of the workplace.

Its main advantage lies in the possibility of organizing certain planning for the implementation of personnel strategy: personnel marketing opens up human resources for the enterprise in the long term, capable of forming a strategic potential through which it is possible to implement the planned activities. Numerous difficulties in the formation and development of civilized market relations in our country do not allow to fully implement the detailed models of personnel marketing in domestic realities.

Personnel marketing is a new approach of an organization aimed at enhancing its own attractiveness among employees and potential employees. It is seen as type of management activities aimed at long-term provision of the organization with human resources (Beliavcev and Kalinichenko, 2013). Marketing implementation is the task not only of the personnel service, but also of all employees working with personnel or representing the organization in the external environment (Buehner, 1997).

The goal of personnel marketing is the optimal use of the organization's human resources by creating favorable working conditions and communications that contribute to increasing their efficiency; development in each employee of loyalty and striving to achieve the goals of the organization. In the labor market, the objects of marketing are staff and jobs, so staff marketing begins with identifying and meeting the need for qualified and professional staff based on labor market research. In this context, marketing tools are used in two ways: marketing, product-oriented, which are labor services; marketing focused on meeting the needs of employers.

The basic principles of personnel marketing: focus on meeting the needs of personnel; motivation of all personnel of the company to meet the needs of external consumers; using traditional marketing methods within the organization; cross-functional cooperation of all departments, active interaction of personnel with managers, clients; readiness for change (Ballantyne, 2000).

The following marketing areas can be distinguished concerning personnel in the organization: development of requirements and professional competencies for personnel; determination of the qualitative and quantitative needs for personnel; calculation of costs for the acquisition and further use of personnel; selection of sources and methods of covering the need for personnel (Nekrasov, 2017).

Another important point in personnel marketing: no matter how diversified the company is, it can create corporate value by providing advanced management of the education of its leaders and the formation of "human capital". In a global knowledge-based economy, intangible assets, such as human capital, make up about 80 % of an organization's value. The transformation of intangible assets into tangible results represents a new way of thinking for most organizations. Those who manage to master this process (which largely depends on the organization of work with staff) can secure a significant competitive advantage (Krivoruchko and Gladka, 2012).

Thus, the concept of staff marketing – a system of interconnected views that give rise to each other, ideas, provisions of marketing activities, taking into account the need to achieve the goals of the enterprise to carry out: labor market research, compliance with trends in the paradigm of organization, society and forecasting its situation; study of the demands, needs of the workforce and their fullest and most effective satisfaction through the relationship with external sources that provide the company with staff; analysis of the personnel potential of the organization and the quality of its use; forecasting and planning of personnel needs –development and implementation of personnel management strategies; organization of communication activities; personnel examination.

It should be noted that the main tasks of personnel marketing include not only conducting research, but also bringing their results to the subjects of market relations, who can make economic choices based on them, adjust their behavior.

Personnel marketing of a modern enterprise has a two-level structure: External personnel marketing is a system of activities that allows its subjects to assess the state of the labor market, trends in its change and make informed management decisions in the field of recruitment (employment), promotion of employment and effective use of human capital (Kiyan, 1995). Internal personnel marketing is an approach to firm personnel as customers and providing them with a product that meets their needs (Kotler *et al.*, 2007).

This approach transforms the traditional elements of 4P marketing (product, price, sales and product promotion) into the following elements of personnel marketing: the range of tasks and responsibilities of the employee, the degree of employee motivation or the effort that the employee is willing to put into performing his job duties, the organizational structure of the company, aspects of organizational culture.

Effective models of personnel marketing, offered by foreign researchers and practitioners, provide for the allocation of internal and external marketing of personnel within the functional blocks: research and planning; selection of personnel markets; the work of the media; formation of contractual relations; organization of workplaces; promoting development; staff care. Each of these blocks has its own complex structure (Personalmanagement, 1999).

Such detailed models of personnel marketing, successfully implemented and proving their effectiveness in European countries, as evidenced by published data on companies such as Audi, Mercedes, Messerschmidt, Henkel, etc. (Durakova, 2013), so far, unfortunately, they cannot be fully realized in domestic realities. The main reason for this is the continuing phase of the formation of civilized market relations amid continuing external shocks and internal structural problems.

Although in domestic practice there are few examples of the functioning of individual elements of the modern personnel marketing model, there is still no need to talk about serious successes in the implementation of the complete system. Nevertheless, it is necessary to move in this direction. Based on scientific developments and the experience of enterprises, we will try to determine what is necessary, first of all, for a modern Ukrainian enterprise to build an effective marketing of personnel.

Now, only a small part of domestic enterprises includes personnel marketing in the list of tasks solved by HRservices. However, marketing functions are often overridden by personnel planning functions. At the

same time, the definition and coverage of the need for personnel does not work for the long term. This situation is typical for both Ukrainian and some foreign organizations.

Currently, in the activities of any organization, regardless of its size and structure, a special role is assigned to personnel, as the main element of the functioning of labor processes. Consequently, modern enterprises are faced with the urgent task of creating such conditions that will ensure the optimal and efficient use of human resources, taking into account the interests, needs of both organizations and employees. Achieving these aspects is possible through the introduction of marketing in HRmanagement.

The growing role of personnel marketing is driven by the need for interaction between labor markets, labor buyers and labor resources. As for the implementation of personnel marketing in organizations, it goes through this process in the form of certain stages. Each separate stage is a specifically directed independent activity.

The main stages of personnel marketing can be distinguished: research of the company's personnel potential, identification of the qualitative and quantitative needs for personnel; HR audit; labor market monitoring; job profile compilation; identification of competitors in the labor market; research on ways to attract personnel; Implementation of professional development programs for personnel; analysis of the effectiveness of the implemented personnel marketing activities (Personnel marketing: instructions for use for the head, 2017). Is the marketing of personnel in foreign countries more developed than in Ukraine, is the Ukrainian management lagging behind in this matter?

Let's move on to considering the world experience in the field of personnel marketing. Vivchennya and public awareness of the effective management of personnel will give the opportunity to take into account the main aspects, such as the respect of the current economists-practitioners and sciences.

Currently, in the countries of Western Europe, due to demographic problems, the changing values of candidates for vacant positions and current personnel, personnel marketing is entering the international level. A characteristic feature of personnel marketing in foreign countries is the desire to integrate all aspects of working with human resources, all stages of their life cycle, from the moment of hiring to the payment of retirement benefits. All this requires an increase in the number of HRdepartments. In the US, there is one HRspecialist for every 115 employees; in Japan, for 38 people (Kibanov, 2010).

In highly developed countries, such as the USA, France, England, all enterprises use a certain personnel marketing policy, its essence lies in the fact that the selection of personnel is not particularly difficult, and the

employee can freely quit or transfer to another position. This technology is aimed at top management.

The role of HR marketing personnel is increasing. The American company AdAge has provided a report that predicts that Apple may double the number of its marketing staff. The team currently has 300 employees, but Apple plans to increase the number to 600. Doubling the headcount of the HRmarketing department enables Apple to pursue policies to reduce its reliance on recruiting and auditing agencies.

Adaptation as a process of adaptation of the employee to the conditions of the external and internal environment becomes an important element for achieving effective results by new employees of the organization. The main reasons for dismissal of employees for several months after employment are the discrepancy between reality and expectations, as well as the difficulty of integration into the new organization. Many companies spend a lot of money on recruiting new staff. But at the same time, companies do not have or have not developed measures for staff adaptation. According to statistics, most employees are laid off within the first three months of employment (Olifirov, 2011). Thus, the lack of institutions of adaptation leads to low performance. According to Kulikov P., the mechanism of adaptation is designed to ensure the stability of the parameters of the system, and therefore the system as a whole, to the action of negative environmental factors (Kulikov, 2012).

French companies place high demands on the level of employees due to the presence of fierce competition. Particular attention is paid to retraining: promotion is possible only with constant retraining and improving employee knowledge, training of all employees without exception in certain specialized programs at enterprises, employees are constantly informed about the state of the enterprise and new internal vacancies.

The system of employee participation in production management, which has developed in Germany, is peculiar. It includes: joint participation in the supervisory boards of firms representing capital and hired labor; the existence of a «worker-director»; production councils at enterprises consisting of workers.

The latter are created at enterprises that have at least 5 permanent employees with the right to vote (age over 18 years, work experience of at least 6 months). At the same time, employers are obliged to provide employees and the company's board with relevant information, accept requests and suggestions from them, study and take into account the opinion of the company's board on socio-economic development of the latter. (Bazaliyska, 2015).

In German companies, personnel policy is carried out by special services, the number of which depends on the number of employees: there is one

employee of the HRdepartment for 130–150 employees. Recently, there has been a tendency for the growth of HRservices (Shchekin, 2004).

Most enterprises in Germany use the approach of selecting candidates for vacant positions from other countries, and, in most cases, the proposed salary is much higher than that of domestic workers for the same position. Companies in Germany that pay attention to personnel marketing include Volkswagen, which uses digital projection in personnel training, and Philips. Volkswagen plans to introduce the innovative Augmented Reality technology. The company is focused on the use of digital projections when training employees of service centers. The challenge is to ensure that Volkswagen employees worldwide are trained at the highest level.

At Phillips, HRprofessionals annually figure out what training could improve employee performance and make a plan for the year. The company pays special attention to online courses. Philips has implemented a special «Testimonials of the Insider» project to improve the quality of the internship. This project is designed for the public to see how the company operates. Each Internet user can go to the official website of the company and watch videos of employees in which they share their impressions and feedback on working at Philips (How to work at Philips, 2015). As a result of this program, there was a significant increase in both the attendance of the career website and the level of user satisfaction and their assessment of the consumer loyalty index.

One of the most striking examples of the use of personnel marketing in foreign companies is the experience of the American low-cost airline Southwest Airlines. For new employees, the company runs a specialized program «Close Hearts». The program is aimed at more comfortable adaptation. The essence of the program is that each new employee is provided with a mentor for six months (Starikova and Timinova, 2014). Through in-house marketing of its personnel, Southwest Airlines has been able to create very high organizational loyalty among its employees. Outside HR marketing has allowed the company to become one of the Forbes most eligible employers in the United States (Begley Bloom, 2021).

Personnel marketing abroad is developing at a fairly rapid pace. Most companies form their own marketing programs with valuation techniques. These companies include: McDonald's, Starbucks, Toyota, Coca Cola. The Nestlé company is also developed in this matter. For example, Nestle uses gamification as one of the newest methods of personnel training (Starikova and Timinova, 2014). One of the largest corporations in the public catering sector, McDonald's, creates a labor market offer adapted to various characteristics of target groups. McDonald's presents a good career start for students with flexible hours, further development and career advancement.

We cannot overshadow the posture of respectful Japanese personnel management practice. The peculiarity of the whole system of polygons is in the nosy systems of group responses to the results of the robotics, stimulating the protagonists and the communication system to work on the horizontal level. A system has been given for the transmission of the peculiarities of the foreman, his strengths and weaknesses, and even in the interim of the results, he will get a seat, and the services will be provided and equipped with a more robust mission.

The Japanese experience is an important example of the active use of personnel marketing in foreign organizations. In Japan, recruiting starts from the lowest levels, which implies a special methodology for selecting, recruiting and hiring personnel. This is due to the Japanese "lifetime employment" system. An example of a Japanese company applying personnel marketing is Honda Motor Co., LTD, an international automotive and motorcycle manufacturing company. The main principle of the company is respect for the individual and for all his needs. Honda cares deeply about building a strong corporate spirit full of vitality and creativity.

Foreign advice has taken advantage of the lack of positive tendencies in the personnel management process, which is definitely a good thing for practical Ukrainian enterprises.

The current state of the personnel management system in the Ukraine of the specific minds of the transition period. Its main features are the practical availability of connections between enterprises and the lack of efficiency of their intellectual performance, the instability of the legal and regulatory framework, the practical availability of the government, the stability of the economy and the political So far from the ideal is the market of vitchiznyh svitnih services, de practically all-day balance between the real needs of the market and specialists.

The level of high-quality training of the vicarious fakhivts is meaningfully sacrificed to the vimogs, who are seen by the international markets of prats. Personnel management systems at large enterprises are old and do not last for an hour.

As soon as we talk about strategic planning, then the French teachings of J.-J. Lamber as an element of a strategic plan for marketing viznacha monitoring of marketing analysis, analysis of competitiveness, adaptations to changes in the middle, optimization of the business portfolio (Lamber, 2011). In the studies of I. Ansoff strategic planning is viewed as an element of strategic management, which will prevent the systemic development of companies before problems (Ansoff, 2013). Modern strategic marketing starts as marketing is a matter of fact, in which the involvement of a philosophical principle is to start putting companies to themselves, customers, their own workers, contributors to the capital, middle managers, competitors, community leaders.

Strategic planning will give you the ability to establish pre-construction goals and replace the breakdown of plans for flow operations and transfer of ways and methods of implementation. From a glance N. Kudenko, marketing strategic planning is the whole management process of establishing equilibrium between marketing goals and marketing opportunities and resources of companies (Kudenko, 2010).

Competent personnel policy allows to achieve better satisfaction of customer needs. Therefore, the development of human resources is the basis of long-term and dynamic development of the enterprise. Personnel policy should include: creating conditions for effective work; personnel training; motivation system; improvement and strengthening of corporate culture; formation of a team of highly professional specialists (Savina, 2018).

The chosen direction of achieving the goal in terms of staff involves the need to build a relationship between the system of motivation and initiatives in the development of innovative ideas, quality of service. Indicators that allow to assess the implementation of this include innovation (proposal of new ideas, recommendations for improving the enterprise), excellence (attendance at trainings, courses, willingness to learn new methods and techniques of service and work, success in compulsory education), teamwork (willingness to help their colleagues, mentoring, etc.), customer focus (quality of service). Awareness of the need and support of staff in the Ukrainian realities will help to improve internal business processes.

The strategic goal in terms of business processes is product competitiveness. To achieve this goal in Ukraine it is necessary to: develop effective marketing programs; develop the customer network and increase product distribution channels; optimize costs; increase labor productivity; increase service efficiency; to introduce innovative developments, use of the newest technologies. In order to solve problems in selected areas, it is advisable to implement the development of new ways of interacting with customers.

In developed countries, customer relationship management (CRM – Customer Relationship Management) is introduced in the activities of banking institutions, which involves focusing on a specific customer, the desire to meet the maximum number of his needs (Savina, 2018). It is necessary to implement partnership marketing – a modern approach to working with clients, which includes the establishment and development of long-term partnerships with key customers, based on mutual interests in doing business.

Let's move on to considering the Ukrainian experience in the field of personnel marketing. The unstable situation on the labor market in Ukraine is forcing many companies to optimize personnel costs. Changes are taking place in the budget of HRservices for individual personnel marketing

processes. All this determines the need to strengthen the company's image as an employer, as well as to form a strong HRbrand.

In times of crisis, it is especially important to show companies how much they care about their employees. Since the formation of a positive HRbrand allows you to increase the loyalty of the staff, increase the motivation and efficiency of the entire organization. All actions aimed at building a strong HRbrand allow organizations to optimize their costs and develop their own personnel marketing services, thereby not resorting to using the services of recruiting agencies. In terms of the development and application of personnel marketing, Ukraine lags far behind foreign countries.

Personnel marketing is implemented at Ukrainian enterprises extremely rarely and inconsistently. Currently, HRdepartments use only a few HRmarketing tools, instead of using HRmarketing as a system. One of the most popular reasons for the reluctance of companies to introduce personnel marketing into the enterprise management system is the lack of financial resources and the low preparedness of the HRspecialists themselves.

Ukrainian companies, which understand that human resources costs are long-term investments that increase business efficiency, are gradually changing their foundations and resorting to applying foreign experience and creating their own programs in the field of personnel marketing.

Even though in Ukraine the spread of personnel marketing has not yet acquired a mass character, there is already a positive trend of growing interest of a large number of companies in the implementation of marketing methodology in the personnel management process in order to increase the efficiency and competitiveness of the business through the optimal involvement of human resources in the creation process, unique competitive advantages.

What is the situation with the HRbudget for marketing processes in Ukrainian companies? The unfavorable economic environment is forcing businesses to plan their costs more rigorously. Recruitment continues to dominate, as identifying and covering staffing needs is one of the most important HRmarketing functions. Personnel training also remains a priority function for companies. At the same time, many companies do not use the financial indicators of the work of the HRdepartment.

The most important resources for Ukrainian companies are financial and economic resources: payroll fund, social package costs, training costs, personnel recruitment costs, social programs costs (payments, compensations). The labor market has to actively adapt to changing economic conditions. Companies understand the importance of maintaining a payroll by retaining the best employees. Therefore, this item of the HRbudget of the company was most often increased. As for the automation of personnel

marketing processes, more than half of companies have automated one or more HRprocesses. Companies tend to prefer third-party software, but some organizations still have their own designs.

In addition, domestic companies are not fully aware of the impact of investment in personnel on the final result of the company. The practical benefit of this system is that it increases efficiency and profitability, because trained workers work better and more productively, reduces the number of absenteeism (which is a particularly pressing problem for Ukrainian companies).

Summarizing the above material, we can conclude that there are a number of urgent problems in Ukraine that need to be addressed today. Many of these problems are related to the formation of human resources. If the efficiency of human resources formation is increased, such methods can be found that will allow to create teams at enterprises with minimal costs and will bring the expected profit.

The use of personnel marketing is a necessary tool for the implementation of effective personnel policy and successful operation of the enterprise as a whole. Personnel is an important resource of the enterprise to achieve its goals and the successful solution of problems, in particular, is possible only with skillful management on the principles of marketing. It is marketing that allows companies to analyze the labor market and forecast its situation, analysis of human resources, hiring the best professionals in conditions of their shortage, promote career growth, forming a team that would act in concert, as well as monitoring its activities.

After researching foreign and national marketing experience, we can conclude that at the moment in the West as a whole and in a number of other foreign countries, it is more developed than in Ukraine. However, the ideas of foreign scientists and practitioners in the field of personnel marketing are of great interest to Ukraine, which can be adapted in modern conditions.

Conclusions

The study of the essence of personnel marketing, the main problems of its use in personnel management of Ukrainian enterprises, contributed to the formation of the following conclusions:

- Competently organized marketing of personnel as a whole increases the competitiveness of the enterprise and its products, forms the strategic competitiveness of the enterprise.

- Organizations that form and implement personnel marketing have a number of advantages: increased labor productivity, reduced turnover, effective motivation of employees and their high loyalty.
- When focusing on personnel marketing, the self-awareness of managers and functional management specialists should be transformed: through the transition from the role of a formal leader, based only on the hierarchical vertical of power, to the role of an initiator, coordinator, assistant, functionally focusing on goal-setting, motivating personnel and ensuring social responsibility of the enterprise.
- In the Ukrainian realities, the advanced world practices in the field of personnel marketing are quite applicable; the foreign experience of introducing some methods of foreign HRpractices is of particular relevance.

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Organizational and procedural aspects of obtaining testimony during a court interrogation

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Abstract

The article makes a meaningful analysis of the scientific works and the rules of the Code of Criminal Procedure of Ukraine, which define the concept of testimony as a procedural source of evidence in criminal proceedings, its methods of obtaining, verifying, and evaluating. The legislative regulations and procedural procedure for the judicial interrogation of participants in criminal proceedings have been studied. Attention is paid to certain innovations in legislation that require scientific understanding, interpretation, and choice of appropriate tactics by a defense attorney, prosecutor, and judge. The methodological basis of the article is the complex application of general methods and special methods of scientific knowledge in its relationship, selected considering the purpose and objectives of the study, its object and theme. By way of conclusion, the proposals and recommendations of an organizational and tactical nature are based, aimed at improving police practice to address the existing problems of obtaining, verifying, and evaluating testimonies in the evidentiary process.

Keywords: criminal proceedings; evidence; testimony; judicial interrogation; tactics.

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Aspectos organizativos y de procedimiento de la obtención de testimonio durante un interrogatorio judicial

Resumen

El artículo realiza un análisis significativo de los trabajos científicos y las normas del Código de Procedimiento Penal de Ucrania, que definen el concepto de testimonio como fuente procesal de prueba en los procesos penales, sus métodos de obtención, verificación y evaluación. Se ha estudiado la normativa legislativa y el procedimiento procesal del interrogatorio judicial de los participantes en un proceso penal. Se presta atención a ciertas innovaciones en la legislación que requieren comprensión científica, interpretación y elección de tácticas apropiadas por parte de un abogado defensor, fiscal y juez. La base metodológica del artículo es la aplicación compleja de métodos generales y métodos especiales de conocimiento científico en su relación, seleccionados teniendo en cuenta la finalidad y objetivos del estudio, su objeto y tema. A modo de conclusión, se fundamentan las propuestas y recomendaciones de carácter organizativo y táctico, encaminadas a mejorar la práctica policial para abordar los problemas existentes de obtención, verificación y evaluación de testimonios en el proceso de prueba.

Palabras clave: proceso penal; prueba; testimonio; interrogatorio judicial; táctica.

Introduction

The main purpose of criminal procedural evidence is to obtain an investigator, prosecutor, court complete and reliable knowledge about the event of a criminal offense, the guilt of the accused in its commission, other circumstances relevant to the proper resolution of criminal proceedings. Such knowledge is obtained in the manner prescribed by the Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine), as defined in Part 2 of Art. 84 of this Code of Procedural Sources. One of them is the testimony of participants in criminal proceedings, which are the most common source of evidence. Based on them, the circumstances of the criminal offense to be proved are established. Often such circumstances are established solely on the basis of testimony, resulting in a court decision.

The change in the methodological paradigm, which occurs in connection with the adoption of the new Criminal Procedure Code of Ukraine, has significantly affected the legal regulation of obtaining and using in evidence the testimony of participants in criminal proceedings (Shilo, 2015). At the same time, the procedure for obtaining testimony in court defined in the CPC of Ukraine, as well as the peculiarities of using

testimony as evidence in evidence, are an important guarantee against abuse by persons conducting criminal proceedings.

The success of obtaining and verifying evidence in criminal proceedings is possible only when the tactics developed by criminology and based on the data of psychology and the results of generalizations of forensic practice are used.

In forensic science, tactics for obtaining testimony are studied and developed mainly for investigative (search) actions, which are carried out during the pre-trial investigation. Similar techniques, although they can be used during judicial interrogation, require, however, significant refinement and improvement, because judicial interrogation is perhaps the most complex forensic action, which has procedural, organizational, forensic, psychological and ethical aspects. Skillful interrogation requires creative application not only of the law, but also of knowledge in the field of criminology, psychology, pedagogy, ethics, and life experience (Maksymyshyn, 2016). The above necessitates the study of the legal nature of testimony, legislative regulation of the procedure for obtaining and using it in evidence in criminal proceedings.

Thus, the current issues are the development of not only general theoretical (methodological), but also private-scientific provisions of forensic tactics as a branch of forensics, which would raise to a higher level the tactical skills of persons empowered to obtain testimony from participants in criminal proceedings.

1. Methodology of the study

The methodological basis of the scientific article is the dialectical-materialist method of scientific knowledge of social and legal phenomena and general scientific and special methods based on it.

Methods of logic (induction, deduction, analogy, analysis, synthesis, etc.) were used in the study of regulations, materials of criminal proceedings, concepts, points of view of the authors on certain issues included in the subject of the scientific article, their generalization and formulation of conclusions; descriptive-analytical - to interpret legal categories, formulate definitions and clarify the conceptual and categorical apparatus; modeling - during the formation of proposals and conclusions in the work; comparative legal method - when comparing scientific research and concepts available in legal science, the provisions of regulations.

The analysis of the norms of the current criminal procedural legislation and the practice of its application, the interpretation of the provisions of the relevant normative legal acts and materials of judicial practice was carried out using formal-dogmatic and hermeneutic methods. The method of theoretical and legal modeling allowed to substantiate the proposals aimed at improving the theoretical and applied aspects of obtaining the

procedural order of testimony of participants in criminal proceedings. The analysis and generalization of criminal proceedings was carried out with the help of sociological and statistical methods.

2. Analysis of recent research

The problem of testimony, their collection, verification and verification of the formation and use in criminal proceedings traditionally belongs to those that attract the most attention of specialists. However, in the perspective of the latest legislation of Ukraine, not many scientific works have been devoted to their study so far. In particular, it is necessary to point out the scientific achievements of such scientists as M. Turkot (Turkot, 2020), H. Teteriatnyk (Teteriatnyk *et al.*, 2021), P. Zinchenko (Zinchenko, 2011), V. Goncharenko, V. Nor, M. Shumilo (Goncharenko *et al.*, 2012), O. Dekhtyar (Dehtyar, 2013), O. Shilo (Shilo, 2015), N. Maksymyshyn (Maksymyshyn, 2016), M. Pohoretsky (Pohoretsky, 2008), V. Shepitko (Shepitko, 2007), I. Kohutych (Kohutych, 2009), V. Babunych (Babunych, 2011) and other scientists.

The study of the current state of forensic support of judicial interrogation in the criminal process of Ukraine led to the conclusion that the existing system of tactics developed by forensic science, their content needs further analysis, systematization and refinement. There are still controversial issues regarding the procedural possibilities of participants in criminal proceedings to collect and verify testimony as sources of evidence, the legal definition of judicial interrogation and delimitation of its types, the subject composition of some of them, the admissibility and necessity of tactical means and others.

The purpose of the article is to clarify the normative content of certain provisions of the CPC of Ukraine, which define the concept of testimony in criminal proceedings as a procedural source of evidence, their types, methods of obtaining, verification, and evaluation during the trial.

To achieve the goal of the study, the following main tasks are set: to clarify the essence of the testimony as a source of evidence in criminal proceedings; determine the legal nature and tasks of judicial interrogation and its types; generalize scientific ideas about the concepts and features of judicial interrogation; outline the range of subjects of judicial interrogation and the specifics of their participation in it; identify typical tactics of the prosecutor-public prosecutor, defense counsel and judge in the preparation and conduct of judicial interrogation.

3. Results and discussion

In accordance with Part 1 of Art. 95 of the CPC of Ukraine testimony as a procedural source of evidence - is information provided orally or in writing during the interrogation of suspects, accused, witnesses, victims, experts on the circumstances known to them in criminal proceedings that are relevant in these criminal proceedings (Criminal procedure code of Ukraine, 2012).

Signs of testimony as a procedural source of evidence, based on their legal definition, are: 1) testimony - is information provided during the interrogation (orally or in writing) (a sign relating to the procedural form of testimony); 2) testimony may be given by a suspect, accused, witness, victim, expert (a sign concerning the subject of their provision); 3) the connection of the information that makes up the content of the testimony, with the circumstances relevant to the criminal proceedings (a sign concerning the content of the testimony). The absence of these features deprives the information obtained of the value of testimony as a procedural source of evidence in criminal proceedings (Shilo, 2015).

As indicated in paragraph 8 of the Letter of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases dated 05.10.2012 № 223-1446 / 0 / 4-12 "On some issues of the procedure for judicial review in court proceedings in the first instance in accordance with the Criminal procedural code of Ukraine", the court, guided by the general principles of criminal proceedings, before the direct examination of evidence must ensure adversarial proceedings, equality of arms, freedom in presenting their evidence and in proving before the court their persuasiveness, self-defense and defense of their legal positions, exercise of other procedural rights by them, in particular regarding the submission of a petition for declaring evidence inadmissible, as well as information indicating their obvious inadmissibility, etc.

In this regard, the court in determining the amount of evidence to be examined and the procedure for their examination must consider the views of the parties to the criminal proceedings on these issues and the possibility of proper exercise of their procedural rights and procedural obligations. In addition, determining the order of examination of evidence, the court must proceed from the rules of Part 1 of Art. 349 of the CPC of Ukraine, which stipulates that the evidence on the part of the prosecution is examined, first of all, and on the part of the defense - in the second.

Based on the content of Part 2 and 3 of Art. 95 of the CPC of Ukraine, for the accused, the victim to testify during the trial is their right, and for a witness, an expert - a duty. The obligation to ensure the presence of prosecution witnesses during the trial in order to exercise the right of the defense to be questioned before an independent and impartial court rests with the prosecution (Part 3 of Article 23 of the CPC of Ukraine).

As some authors of the scientific and practical commentary to the CPC of Ukraine note, "such an approach is a manifestation not only of the principles of direct examination of testimony, but also the principles of adversarial proceedings and the right of the accused to a fair trial" (Goncharenko *et al*., 2012: 89). In particular, paragraph "e" of Part 3 of Art. 14 of the International Covenant on Civil and Political Rights, adopted on December 16, 1966 by the UN General Assembly and ratified by the Decree of the Presidium of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic № 2148-VIII of 19.10.1973 provides that everyone has the right to consider any to prosecute witnesses who testify against him or to have the right to have those witnesses questioned and to have the right to summon and question his witnesses on the same terms as witnesses testifying against him. (International covenant on civil and political rights, 1966).

A similar rule is enshrined in paragraph "d" of Part 3 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950, ratified by the Law of Ukraine of 17.07.1997 № 475/97-VR, which stipulates that everyone accused of committing a criminal offense has the right to interrogate prosecution witnesses or demand, to interrogate them, as well as to demand the summoning and interrogation of defense witnesses on the same terms as prosecution witnesses (Convention for the protection of human rights and fundamental freedoms, 1950).

Forensics examines the interrogation in terms of tactics used during its conduct, the place of interrogation in the methodology of investigation in order to form evidence. In forensic psychology, interrogation is seen as a process of specific communication between the interrogator and the interrogated, studies the psychological phenomena associated with the judicial (investigative) action, as well as the laws of the human psyche, manifested in the interrogation. From the point of view of the criminal process, interrogation is a process of obtaining and verifying testimony regulated in detail by law (Pohoretsky, 2008).

The genre of interrogation is a complex genre with several participants, each of whom strives for a certain goal. The greatest linguistic contribution to the judicial interrogation is made by the representatives of the prosecution and defense in the criminal process and, of course, by the person being interrogated. The judge is considered the most eloquent participant in this genre. Verbosity is initially characteristic of a judge in adversarial proceedings. According to the English researcher K. Evans, who characterizes the trial in England:

> In the adversarial system ... the judge acts as an impartial person, watching the lawyers play some kind of court tennis. If the lawyers know their case well, then, in theory, the judge should sit through the whole process without saying almost anything. In ancient times in England, a new judge was advised to take a sip of holy water in his mouth at the beginning of the case and keep it there until the end (Evans, 1995: 89).

The procedural procedure of judicial interrogation is regulated by the norms of the CPC (Articles 224–226, 232, 351–354, 356, 490, 491, 567), which regulate the general procedure and sequence of interrogation, interrogation of witnesses, victims, suspects and accused, features of interrogation of minors and minors, persons of different procedural status, conducting interrogation by video conference, etc. Failure to comply with the procedural rules of interrogation is a violation of the law and entails the invalidity of the investigative or forensic action and the inadmissibility of the testimony obtained as a source of evidence.

A characteristic feature of a court interrogation is that it is conducted during the trial, and the interrogated person at this stage may be prompted to testify not only by the prosecutor or the court, but also directly by the accused, his defense counsel, victim and other participants in the trial.

Judicial interrogation as a way of gathering and verifying evidence has its own norms and methods that can be characterized as a means of obtaining evidence (procedural, tactical, psychological). As N. Maksymyshyn rightly points out, judicial interrogation can be said as an independent way of obtaining information about the circumstances of the event under investigation, which is characterized by its specifics of obtaining and recording relevant information, which in criminal proceedings belongs to the court (Maksymyshyn, 2016). Thus, judicial interrogation is an independent way of both gathering and verifying evidence. By obliging the investigator, the prosecutor, and, in part, the defense counsel and the court to examine the evidence, the legislator suggests how they should carry out this collection and verification.

From the standpoint of defense counsel and the court, judicial interrogation is a way to obtain testimony from interrogated persons, and for the public prosecutor, in addition, it is also a way to expose those accused of committing a crime. For the victim of a crime, it is a form of exercising the right to testify, file petitions and objections, complaints, that is a way to protect their own interests, and so on. For the accused, judicial interrogation is a form of exercising such rights as the right to testify, file objections, petitions, complaints, that is a way of protection against the accusation. In particular, participation in the interrogation allows them to learn about the activities of the relevant officials.

The above gives grounds to summarize that judicial interrogation as an activity and independent investigative (search) action carried out during the trial is a set of actions of the public prosecutor, defense attorney and court, as well as other participants in the trial and the interrogated person (witness, victim, accused, expert) in relation to: a) giving testimony and receiving them (perception and clarification, if necessary - involvement of an interpreter or specialist in the interrogation) by the person conducting the judicial interrogation; b) asking questions to the interrogated in order to

encourage the addition of testimony, or expert opinion; c) the use of audio recording, video recording during this investigative (search) action, etc.

V. Shepitko specifies judicial interrogation as a common procedural action during court proceedings. We share his position that this is a complex and multi-subject process of communication between the people involved. Such communication is public and open. This is the process of information exchange, the process of interaction, mutual perception of participants (Shepitko, 2007). It has its own features, namely: 1) an expanded range of participants in judicial interrogation; 2) complicated information exchange between interrogation participants; 3) the special role of the judge as a regulator of information exchange; 4) repeatability of reported readings (replay); 5) adversarial nature of judicial interrogation; 6) the complexity of reflexive management of participants in judicial interrogation; 7) publicity, openness: the interrogation is conducted not by one person, but by a number of participants in the process; 8) those who interrogate, as a rule, got acquainted with the testimony given earlier in the pre-trial investigation, etc. (Shepitko, 2007).

Judicial interrogation consists of several main stages, at least the free story of the interrogated and the respondent's answers to the questions of the prosecutor, victim, civil plaintiff, civil defendant and their representatives, defense counsel, accused, judges (judges) (Shepitko, 2007). We consider such order quite correct as the free story promotes full reproduction of circumstances, allows to state certain information completely. When the interrogated is not free to report all the circumstances of the case known to him (minor or juvenile witness, victim, accused), the judicial interrogation takes place only in the form of questions and answers.

The decision (adoption) of a lawful, reasonable, motivated and fair court decision (sentence or court decision of a sentence) depends on the skillful conduct of interrogations in court. It is in this, among other things, it is justified to see the most relevant meaning and task of judicial interrogation.

It is extremely important to establish psychological contact, which includes information about the study of the interrogated person, which is contained in the materials of criminal proceedings, testimony of witnesses and victims, characteristics obtained as a result of operational and investigative activities. Analysis of this information allows you to create a preliminary psychological and social image of the person to be interrogated.

During the establishment of psychological contact during the interrogation, the prosecutor-prosecutor, defense lawyer, judge, etc. get a direct impression of the identity of the interrogated, should create a favorable atmosphere that will encourage the interrogated to communicate. Achieving such an atmosphere is quite difficult, because the participants in the interrogation are different people - young, frank and vice versa, polite,

and "cheeky", sociable and non-contact, as well as people who do not want to communicate due to various emotional or other states and intentions (Maksymyshyn, 2016).

During the interrogation of a conscientious person who intends to give truthful testimony, psychological confrontation does not arise and the interrogation is mostly without problems. However, in the interrogation of persons who not only do not want to establish an objective reality in the case, but also oppose it, psychological confrontation becomes the most important component of the interrogation, which significantly complicates the achievement of its objectives. This is especially true for interrogations conducted by the public prosecutor or defense attorneys in the context of interrogations of prosecution witnesses and victims. Of course, both the prosecutor and the lawyer should try to overcome this barrier by using the possibilities of psychological influence on the interrogated. Such influence has the form of emotional and logical character.

In our opinion, the evidentiary value of judicial interrogation consists of an informational and argumentative component. The process of interrogation, that is the actions of interrogators to establish questions, the reaction of the interrogated, his answers, other accompanying moments of the situation in court, affects the formation of the judge's belief in the quality of testimony. In case of doubt, the chairman himself has the right to take measures to eliminate them by asking questions.

In conditions of competitive competition, every piece of evidence, including testimony, must be examined from two sides on all points that are of substantive interest to establish the disputed circumstances of the criminal proceedings. The specificity of the examination of personal evidence is that it examines not only the content of the testimony, but also the ability of the person to provide the court with reliable information about the circumstances of the criminal offense.

Interrogation is also a way for a party to realize its procedural function, its procedural interest. But on the basis of the results of the interrogations of the parties on the comparative analysis of the testimony obtained at the relevant stage of the interrogation, the judge can make a reasonable conclusion as to whether this person can be trusted and considered evidence of his testimony. This comparison of testimony received by different parties from the same interrogated person reveals the strength of the evidence or, conversely, its inability to convince someone and prove something.

The parties must be active in conducting interrogations, but the presiding judge has the right to monitor compliance with the rules by interrogators and testimonies, to create optimal conditions for clarifying the true content of the information obtained about the circumstances of the criminal offense. Testimony, as a source of evidence, is the result of the

formation of the judge's inner conviction in the accuracy of the information communicated to the interrogated. If we consider reliable information as a fact, then only the judge's opinion can be an indicator of reliability. The judge will believe the witness's report during the interrogation - and from his testimony an evidentiary fact is formed, he doubts - the testimony will be rejected and there will be no evidentiary fact.

Judges in the adversarial process, as well as the professional representatives of the prosecution and defense, have a regulatory role. This role is to create a business environment for litigation, to define and regulate communication, to eliminate sharply conflicting relationships, and to reduce excessive emotional arousal among participants. All this is not inherent, in fact, for judicial interrogation. We share the position of those who believe that a judge in the interrogation process, as well as during all judicial evidence in general, should keep the initiative (Kohutych, 2009).

In providing this initiative, the functions of psychology, among other things, are related to the three processes that determine the scope and level of the actual cognitive knowledge during the court interrogation. In particular, they include a) diagnosis of the respondent (type of temperament, character, psychological state, level of intelligence, social status, predisposition to alcoholism); b) a system of psychological techniques that contribute to obtaining information; c) evaluation of information obtained during the interrogation from the standpoint of its reliability and probative value (Konovalova and Shepitko, 2008).

We consider it possible to allow certain forms of administrative activity of a judge in relation to judicial interrogations. First of all, he cannot remain passive in determining the subject and limits of the interrogation. He has the right to control the attitude to the case of both questions and answers, to terminate the protracted interrogation, which does not bring any concrete results. On the other hand, the presiding judge, without contradicting the prohibition to perform the function of a party to the prosecution, has the right to take measures to fill the gaps in the evidence base of a particular criminal proceeding and to use interrogation for this purpose.

Activity in this direction is quite justified when it comes to obtaining evidence in favor of the accused or to verify reasonable doubts about his guilt. The presiding judge, restoring the fairness of the trial, has the right to participate in interrogations to remove obstacles to a comprehensive and objective consideration of the case, including to correct minor violations of criminal procedure or other legislation during the pre-trial proceedings.

In general, it can be summarized that the presiding judge is responsible for the proper organization of the fact-finding process from the evidence presented and obtained by the parties during the trial. Due to the direct perception of the course of judicial interrogations, behavior to the

participants of the interrogated process, and even more so by asking questions to the interrogated, removal of incorrect questions that do not belong to the case, the presiding judge participates in the interrogation and evidence in criminal proceedings.

The analysis of the CPC of Ukraine leads to the conclusion that depending on the procedural position of the interrogated in court there are interrogations of: a) the accused; b) the victim; c) a witness; d) interrogation of the expert. To clarify certain features of this investigative (search) action, we consider it appropriate to clarify the procedural and tactical aspects of obtaining and verifying the testimony of a witness, accused and victim in criminal proceedings.

At present, we consider it indisputable that the effectiveness of any kind of judicial interrogation depends not only on compliance with the rules of criminal procedure legislation, but also on the use of tactics developed by forensic science. That is why its tactical content plays a significant role in the execution of judicial interrogation.

The procedure for questioning witnesses in court is quite clearly regulated. In particular, in Art. 352 of the CPC of Ukraine states that a witness is a natural person who knows or may be aware of the circumstances to be proved during criminal proceedings, and who is summoned to testify (Part 1 of Article 65 of the CPC of Ukraine).

In the list of witnesses, which is formed at the request of the prosecution and defense (such witnesses are referred to as prosecution or defense witnesses) may also be listed in accordance with para. 4 h 7 Article 140 of the CPC of Ukraine are understood as witnesses of a certain investigative (search) action and persons who conducted covert investigative (search) actions or were involved in their conduct (Part 2 of Article 256 of the CPC of Ukraine). At the same time, the persons defined in Part 2 of Art. 65 of the CPC, except as provided in Part 3 of Article 352 of the CPC of Ukraine, that is when the persons defined in paragraphs. 1-5 part 2 of this article were released from the obligation to maintain professional secrecy by the person who entrusted it, in the specified last amount and in writing.

The order of questioning of witnesses is determined at the request of a party to the criminal proceedings, in the absence of such a request - at the discretion of the court in accordance with the decision of the latter, determined to determine the amount of evidence to be examined. After that, the presiding judge warns the witness of criminal liability for refusing to testify (Article 385 of the Criminal Code of Ukraine), except when such refusal in accordance with applicable law is the right of this person, and knowingly false testimony (Article 384 of the Criminal Code of Ukraine). Each witness is questioned separately, except as provided in Part 14 of Art. 352 of the CPC of Ukraine, when two or more already interrogated persons

are interrogated simultaneously to find out the reasons for differences in their testimony (Criminal procedure code of Ukraine, 2012).

It is worth noting that the interrogation of a witness in court is significantly different from the interrogation during the pre-trial investigation on the following grounds:

- The interrogation of a person (accused, victim, witness, expert) in court is significantly more distant in time from the event of a criminal offense than the interrogation of a person during the pre-trial investigation.
- Judicial interrogation is public, while the testimony of a witness to the investigator (prosecutor) may take place alone.
- As a rule, this type of interrogation for a person is shorter than during the pre-trial investigation.
- The parties may not use a significant number of tactical techniques during the court interrogation (in particular, in court it is not possible to present the document and offer to comment on its content immediately after the answer of the accused, witness, victim; the party may not immediately appoint a simultaneous interrogation with his participation, the prosecutor or defense counsel have no right to wait until the person is psychologically adjusted to testify, etc.).
- Judicial interrogation provides for a mandatory dialogue format of communication between the party with the victim, witness, expert, while during the pre-trial investigation testimony may initially be given in the form of a free story.
- Testimony, even provided in accordance with Art. 225 of the CPC of Ukraine, are not always sufficient for the court.

The stated features may equally apply to the interrogation of those witnesses who are witnesses of a criminal offense or other circumstances relevant to the criminal proceedings.

It is clear that there is hardly a witness who is able to testify about all the circumstances to be proved in criminal proceedings. At the same time, the value of eyewitness testimony as a source of evidence is beyond doubt. During the interrogation, the opposite situation may occur, when thanks to the witness the circumstances in favor of the accused will be clarified, which will lead to a change in the legal qualification of the act, reduction of the accusation, closure of criminal proceedings, etc.

In addition, the witness eyewitness during the interrogation may provide not only information relating to the subject of evidence, but also

information on other circumstances referred to in Art. 96 of the Criminal Procedure Code of Ukraine. These circumstances are: a) the ability to perceive the facts in respect of which in criminal proceedings another witness (victim, expert) testified; b) in relation to other circumstances that may be relevant for assessing the reliability of the testimony of a witness. In this case, the witness is obliged to answer questions aimed at determining the veracity of his testimony.

Thus, when defining witnesses whose testimony is a source of evidence in criminal proceedings, we mean: witnesses - eyewitnesses of a criminal offense; eyewitness witnesses of other circumstances that may be relevant for the assessment of evidence for their affiliation, admissibility, reliability and sufficiency to make an appropriate procedural decision; witnesses who testify from other people's words.

The choice of tactics of interrogation of a witness in court is determined by a number of specific factors inherent only in judicial interrogation: 1) it is the public nature of judicial interrogation of a witness, lack of "intimacy" of the situation, and the entire courtroom, which has a special psychological impact on the witness; 2) a certain formality of judicial interrogation, due to strict regulation of the trial; 3) a significant gap in time from the event of a criminal offense to the process of direct receipt of testimony, which complicates the reproduction of previously perceived; 4) special nature, as the mechanism of reproduction of testimony by witnesses during the judicial interrogation includes not only personal memories of the witness, but also his and the experience of communication with individual authorized participants in criminal proceedings; 5) the interrogation of a witness in court is not so much of a verification nature as during the pre-trial investigation, but of a verification and identification test.

According to O. Bedrizov, these factors cause a significant narrowing of the set of tactics used. For example, it is difficult to apply in court those techniques that focus on investigative (search) actions carried out in the absence of outsiders. The significance of the suddenness factor is also lost, as witnesses know in connection with which they give the testimony they usually gave during the pre-trial investigation (Bedrizov, 2018).

The tactics of questioning a witness in court should be based on his personality, attitude and involvement in the case. We consider the following tactics of interrogation of witnesses in court to be the most effective: 1) timely demonstration of visual evidence in criminal proceedings (material evidence, expert opinions containing photographs and diagrams, plans-schemes drawn up by the interrogated themselves, etc.). Of course, the use of this technique will facilitate the perception of information provided by a witness in court; 2) increase or decrease of the pace of speech during the interrogation, periodic return of the person interrogating to the initial question; 3) The application of techniques developed in Western

criminology, based on the so-called "loop principle" (for example, "looping" in American criminology), which consists in the repeated mention of the same facts in each question (Osterburg *et al.,* 2011), R. 14).

The prosecutor's efforts should be aimed at creating an environment that ensures that witnesses receive reliable information about the facts and events being investigated in court. The most common tactical recommendations for a defense attorney to question witnesses in court are: each question must have a purpose; it is not advisable to ask about obvious or well-established circumstances; each question should be based on a reasonable calculation, and so on.

According to the CPC of Ukraine, the interrogation of a witness is initiated by the party on whose initiative he was summoned, that is the prosecution witness-prosecutor, and the defense witness-defense counsel, the accused. The court, at the moment, does not conduct the interrogation, but only monitors the observance of the rules of its conduct by the parties in order to avoid wasting time, protect witnesses from insults and ensure the necessary order of the court session. The court should not interfere in the interrogation of the parties, that is the judge can only remove issues that do not relate to the essence of the criminal proceedings at the protest of the party.

In case of ambiguity in the testimony of a witness regarding the presence or absence of specific circumstances, the court may require the witness, the victim to give an unambiguous answer to the question - "yes" or "no" (Part 10 of Article 352), but the presiding judge and judges may in accordance with parts 11 and 13 of Art. 352 of the CPC of Ukraine, only after the witness is asked questions by the victim, civil plaintiff, civil defendant, their representatives and legal representatives or in the examination of other evidence.

It should be noted that in Art. 352 of the CPC of Ukraine does not specify anything about the proposal of the presiding witness or the victim to freely testify, this provision applies only to the interrogation of the accused, as in Part 1 of Art. 351 of the CPC of Ukraine, the legislator explicitly states that the interrogation of the accused begins with the proposal of the presiding judge to testify in criminal proceedings, after which the accused is first interrogated by the prosecutor and then by the defense counsel.

The legislator does not provide for the use of the terms "direct" and "cross-examination" in relation to the interrogation of the accused. As V. Babunych rightly emphasizes, during the interrogation the witness gives his testimony not in the form of a consistent story, but in the form of answers to the parties' questions. Each of the parties interrogates the witnesses presented by him (direct interrogation, main interrogation), remaining within the circumstances that he wishes to prove by the testimony of this

witness; after the main interrogation, the opposite or cross-examination begins, during which it is allowed to ask leading questions (Babunych, 2011).

The answers of the prosecution witness during the direct interrogation must disclose all the circumstances that are subject to proof in the implementation of the legal position of the prosecution, and the defense witness - the legal position of the defense. If the party does not ask the right question, the information will remain undisclosed and not established, because from now on the court does not have to ensure the completeness of the trial and as a result the court will not be able to refer to information that was not voiced by a witness. It is noteworthy that perhaps the most common mistake in the direct interrogation of a witness is the use of leading questions, which are the exclusive prerogative of cross-examination.

In this regard, V. Babunych rightly points out that the interrogation, which is conducted according to special rules, and which should be limited to the circumstances clarified during the direct interrogation or concerning the reliability of testimony and can be conducted only by participants who have the right to initiate judicial interrogation, and whose interest differs from the interest of the person who conducted the direct interrogation (Babunych, 2011).

Defined in Art. 23 of the CPC of Ukraine, the principle of direct examination of testimony, things and documents prohibits the recognition of evidence of information contained in the testimony of a person (accused, victim, witness, expert), and was not submitted by the parties in court. According to the content of this procedural norm: the testimony of the participants in the criminal proceedings is received orally by the court; the information contained in the testimony, which was not the subject of direct investigation by the court, may not be recognized as evidence, except in cases provided by the CPC of Ukraine.

The court may accept as evidence the testimony of persons who do not give them directly at the hearing, only in cases provided by the CPC of Ukraine. In this case, the prosecution is obliged to ensure the presence of prosecution witnesses during the trial in order to exercise the right of the defense to be questioned before an independent and impartial tribunal. This requirement follows from the provisions of subparagraph “d” of paragraph 3 of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (European Convention for the Protection of Human Rights and Fundamental Freedoms) and paragraph 5 of Part 2 of Art. 87 of the CPC of Ukraine (Inadmissibility of evidence obtained as a result of significant violation of human rights and freedoms). Part 2 of Art. 17 of the Criminal Procedure Code of Ukraine (Criminal procedural code of Ukraine, 2012).

The concept of "beyond reasonable doubt" was interpreted in the judgment of the European Court of Human Rights in the case of Korobov v. Ukraine of 21 July 2011 № 39598/03. According to the content of this interpretation, there may be some doubt about each piece of evidence during its evaluation, but if this doubt is within reason, a conviction may be reached. The situation itself "beyond a reasonable doubt" arises when assessing the evidence that the existence of doubt is not consistent with the standard of proof (Judgment of the European court of human rights in the case of "Korobov v against Ukraine").

In the cases of John Murray v. The United Kingdom (№ 18731/91, 8 February 1996), Falk v. Netherlands (№ 66273/01, 19 October 2004), Capo v. Belgium (№ 42914/98, of 13 January 2005) (McBride, 2010: 272-274) The European Court of Human Rights has pointed out that shifting the burden of proof in one way or another to the defense violates the presumption of innocence. In Zhukovsky v. Ukraine (№ 31240/03, 3 March 2011) the applicant was convicted of a particularly serious crime on the basis of the testimony of witnesses, none of whom were present during the criminal proceedings in Ukraine. The court did not hear the testimony of these witnesses directly, and the accused did not have the opportunity to cross-examine them (Judgment of the European court of human rights in the case "Zhukovsky v. Ukraine").

That is, in case of restriction of the rights of a suspect, accused to interrogate a witness of the opposing party or violation of his right to cross-examination, the court decision will most likely be overturned by a higher court on the grounds of significant violation of criminal procedure law.

It should be noted that the main purpose of cross-examination is, inter alia, to discredit the witness of the opposing party by demonstrating the complete failure of his testimony, to prove by leading questions that the witness either gives false testimony or is honestly wrong.

However, the main problem of such an interrogation is that it is difficult to prepare for it in advance because leading questions must be formulated "on the spot" and asked immediately after the direct interrogation. This is a complex analytical work, in which everything depends on the mastery of interrogation tactics, professionalism, even the acting skills of the person conducting it. Therefore, to get the desired answer, it is necessary to ask the right questions and, if necessary, to conduct a certain check of the previously voiced testimony (Maksymyshyn, 2016).

Occasionally, we highlight the signs of cross-examination: it is a type of judicial interrogation; the testimony obtained during such interrogation has signs of proof; conducted after a direct interrogation and may relate to the reliability of the testimony; may be conducted only by the participants in the proceedings whose personal or procedural interest differs from the

interest of the person who conducted the direct interrogation; carried out for the purpose of verification obtained during investigative (search) actions, first of all, direct interrogation of information, disclosure of contradictions in testimony, detection of errors and knowingly untruths, clarification or detailing of testimony previously obtained in court; conducted with the participation of one person - the interrogated and at least one interrogated; prompts are allowed during the event.

Execution of any kind of judicial interrogation is accompanied by an active combination of tactical actions of defense and prosecution on the one hand, and appropriate actions of a judge to resolve a criminal case on the other. By interacting with each other, these main participants in the proceedings contribute to the performance of its tasks in accordance with their procedural position. And they do it, and using tactics tested by forensic science, based on knowledge of psychology and jurisprudence, in order to obtain from the interviewees complete, truthful and convincing testimony (Maksymyshyn, 2016). At the same time, it should be emphasized that the actions of each of the participants are different from each other.

The actions of a defense attorney are characterized by the fact that they focus on the proper preparation and real judicial clarification of the circumstances that justify or mitigate the punishment of his client. Defense counsel is trying to use tactics to refute the prosecution's evidence. Defense tactics facilitate a comprehensive examination of the evidence by articulating their arguments regarding the relevant criminal case in order to convince the court of the correctness of their position.

The tactics of the prosecutor of the public prosecutor, in turn, also follow from the procedural tasks solved by him, namely: to effectively investigate the evidence provided by the pre-trial investigation, to check them, substantiating the admissibility, reliability and sufficiency; seek to create conditions for a comprehensive, objective and complete examination of the evidence, not to ignore and respond to any attempts to illegally influence witnesses and other participants in the trial; timely detect and tactically competently neutralize false refutation, falsification, substitution of evidence; fill in the gaps and errors of the investigation in court; to counteract the attempts of the accused to avoid reasonable responsibility. Thus, these tasks convince that the tactics of the public prosecutor during the interrogation in court is to prepare for future court interrogation and clarify during its conduct the circumstances of the case by using appropriate tactics and other means.

It is worth pointing out certain features of the court's tactics in conducting this (investigative. However, it is carried out taking into account the tactical lines of the prosecutor and defense counsel. This process is complex and multifaceted. "Court tactics absorb (Vorobiev, 1998) The tactical line of the court is aimed at solving the problems of criminal proceedings, taking

into account the views of the parties. expressing his opinion in another way provided by law.

The tactics of the court are determined by the fact that the trial is a continuous work of the constant composition of the court. This circumstance leaves its mark on the content of his work. Evidence is available. However, they must be examined individually, while not losing sight of their totality, that is bearing in mind the entire system of evidence in their combination, and even in terms of questions from the parties and other participants in the proceedings.

Depending on the purpose of judicial interrogation, a number of typical situations are distinguished: conflict-free; conflicting with minor rivalry; conflict with significant rivalry (Baev, 2003). The nature of the situation largely depends on the procedural position of the respondent.

Practice shows that the most effective tactic is to use the contradictions identified during the analysis of the information available in the testimony of the interrogated and other evidence. Usually, this looks like a concentration of the interviewee's attention on the existing contradictions in his testimony with the case materials. The psychological essence of this technique is not to present evidence, but to use the identified contradictions.

In our opinion, for the successful completion of the interrogation, it is necessary to follow the plan in the following sequence: a summary of the testimony of a particular person in the pre-trial investigation; a list of circumstances that need to be investigated in this criminal proceeding; questions to be asked to the interrogated; tactics that should be used for the best conduct of the interrogation as a whole, and additional techniques in case the interrogator does not receive the "necessary" answers to the questions; aspect of the order of evidence. If the interrogation is carried out for several episodes, the scope of the plan will usually be increased, but the structure will remain unchanged.

The use of tactics of judicial interrogation is due to a number of factors: 1) the attitude of the accused to the accusation formulated in the indictment, 2) the presence or absence of a conflict situation, 3) the level of activity of the parties to the adversarial process, etc. If during the interrogation in the judge (court) there are doubts about the veracity of the testimony of the accused, then he has not only the opportunity but also the obligation to psychologically influence him to obtain true testimony. The main thing is that this influence does not go beyond the law and morality.

In general, it should be noted that the success of the application of tactics of judicial interrogation is difficult to predict in advance, as it depends on many factors, especially the characteristics of the interrogated person: his intellectual, emotional, cultural levels and life experience.

The general tactics of interrogation of the accused by the presiding judge are similar to those for interrogation performed by a prosecutor or a lawyer. In particular, if the accused gives confessions, it is advisable to use tactics that ensure a full, comprehensive and impartial clarification of all the circumstances of the case. The establishment of this information is necessary in order to verify the testimony of the accused with other evidence: we must not forget about the possibility of self-incrimination, as a result of pressure on the accused by certain persons during the pre-trial investigation and an attempt to help accomplices. During the interrogation by a court of an accused who does not plead guilty, it is necessary to detail, clarify his testimony and compare them with other relevant evidence in the case in order to draw a definite conclusion about the guilt or innocence of the interrogated. The probative value of the facts with which the defendant's answers during the interrogation are compared should not be overestimated.

The testimony of the victim in court is important for evidence in various categories of criminal cases. Quite often they are the only direct proof of the guilt of the accused. Given the fact that the victim is criminally liable for giving knowingly false testimony under Art. 384 of the Criminal Code, his interrogation begins with the delivery of the court administrator of the relevant memo on his rights and responsibilities, and the chairman finds out whether he understands his rights and responsibilities under Articles 56, 57 of the CPC of Ukraine, and if necessary, explains them (Article 345 of the CPC of Ukraine). Then, in accordance with the procedure established by Art. 353 and parts 2, 3, 5-14 of Article 352 of the CPC of Ukraine, the chairman invites the victim to tell everything he knows in the case. After that he is interrogated by a prosecutor, defense counsel, accused, judge (Criminal procedural code of Ukraine, 2012).

In assessing the testimony of the victim, who, along with the accused, is also interested in the outcome of the case, the court must be balanced and critical. Such interest is natural, as the victim is a person who has suffered moral, physical or property damage as a crime (Article 55 of the CPC of Ukraine) (Criminal procedural code of Ukraine, 2012).

The victim interrogated according to the rules of interrogation of witnesses (Article 353 of the CPC of Ukraine). In the vast majority of cases, the victim interrogated before witnesses are questioned. In addition, the victim as a participant in criminal proceedings not removed from the courtroom. His testimony is not only a source of evidence, but also a means of protecting his interests.

The legislation provides an opportunity for the victim to take an active part in the judicial investigation. Thus, after finding out from the accused whether they have admitted their guilt or not, the court hears the opinion of the victim about the procedure for examining the evidence. The provisions

of the CPC of Ukraine define an important provision on equal rights of the victim in court proceedings with the accused, defense counsel, civil plaintiff, civil defendant and their representatives regarding the presentation of evidence, participation in the investigation and petition.

By analogy with the judicial interrogation of the accused, during the interrogation of the victims it is important to establish whether there are any contradictions between their testimonies, which were reported during the pre-trial investigation and in court. If they exist, the court, using specifying, clarifying, control and additional questions, establishes the causes of these contradictions and eliminates them.

It should be borne in mind that not every contradiction is significant and indicates a change in the victims' positions compared to the pre-trial investigation. Often such contradictions are only imaginary (they seem so). In case of revealing significant contradictions in the testimony, the court has the right to announce the testimony that was given to the victim during the pre-trial investigation. We would like to emphasize once again that it is expedient to do this only after a detailed and comprehensive interrogation of such a victim and establishing the causes of contradictions.

Thus, during the interrogation, the actions of the court are aimed not only at gathering evidence, but also at their verification and evaluation, because in this procedural action such elements of the evidentiary process are inseparable from each other. The court, hearing the testimony of the victim, witness, accused, compares them with the already available set of evidence, checks them in terms of authenticity and relevance, but, as already noted, the court is not bound by the evidence provided by the parties.

The scope of the article does not provide an opportunity to explore all the procedural and organizational-tactical aspects of judicial interrogation. First of all, we are talking about the interrogation of juvenile victims, the interrogation of an expert in court, the interrogation by video conference.

Conclusions

Summarizing the above, it should be noted that judicial interrogation is a process of formulating and investigating in court the procedural source of evidence - testimony, and forming on this basis the internal conviction of the court (judges) on the event under investigation in court, its circumstances and other issues relevant to correct resolution of criminal proceedings.

The interrogation should be considered not only as an investigative (search) action, as one of the ways provided by law to collect, verify and evaluate evidence, but from different angles: as an institution of criminal procedural law and forensic category; as one of the powers of the public

prosecutor, defense counsel and court; as one of the forms of exercising criminal procedural functions in court proceedings; as one of the ways provided by law and developed by criminology to expose persons guilty of a crime; as a procedural way of forming testimony; as a way to protect the accused from prosecution; as a way to protect their own rights and legitimate interests of victims of crime and witnesses.

Direct examination of the testimony during the judicial interrogation allows the court both to fully clarify the circumstances of the criminal proceedings and to prevent the distortion of factual data relevant to a particular criminal proceeding during their receipt and recording. If the testimony was not the subject of direct investigation by the court (except as provided by criminal procedure law), the information contained therein in view of Part 2 of Article 23 of the CPC of Ukraine cannot be recognized as evidence and used in court decisions.

The tactics of interrogation in court is a complex concept, as it is a coordinated combination of tactics of judicial interrogation of the public prosecutor, defense counsel and the court, because they provide the purpose and objectives of criminal proceedings based on their responsibilities. Thus, the tactics of judicial interrogation is a part of judicial tactics as a set of theoretical provisions and recommendations developed on their basis on the most rational tactics, methods and means of effective preparation and conduct in court by the public prosecutor, defense attorney and judge (court) of interrogation.

A high level of knowledge of the psychology of perception of events by individual participants in criminal proceedings and the component of the judicial situation, as well as skillful psychological influence on the interrogated person will facilitate the effective participation of authorized subjects in judicial interrogation and, in turn, establish the circumstances to be proved, to resolve the issue of the need for other investigative (search) actions in the framework of the trial.

Consideration by the court, prosecutor, defense counsel, and other participants in the court proceedings of the organizational and tactical recommendations we have received will help to purposefully prepare for the interrogation of the accused, victim, witness, expert, directly conduct this investigative (search) action, select the most appropriate tactics in each situation.

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Judicial decisions as a source of law

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Abstract

The article deals with the question of the legal nature and essence of the judicial acts of the Ukrainian courts as a source of law. It also analyzes the notion and characteristics of the sources of law according to academics. Particular attention is paid to the investigation into whether the decisions of the Ukrainian courts can be defined as a precedent and whether they have, in turn, binding force for all people. Therefore, the analysis of the legal nature of the decisions of the European Court of Human Rights, the Constitutional Court of Ukraine, the Supreme Court, and the administrative courts was of interest. The study used general and special scientific methods, the basis of which is the application of the results of theoretical research and other generalized information on the sources of law in Ukraine. The authors conclude that these decisions have a different nature than the judgments of the common law system. Although some judicial decisions of Ukrainian courts tend to possess some elements of precedent and are binding, not only for the parties to the case but for all people. This makes it possible to characterize these judicial decisions as complementary sources of law.

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Keywords: precedent; source of law; administrative court; judicial decision; legal relations in Ukraine.

Las decisiones judiciales como fuente de derecho

Resumen

El artículo trata la cuestión de la naturaleza jurídica y la esencia de los actos judiciales de los tribunales ucranianos como fuente de derecho. Analiza también la noción y las características de las fuentes del derecho según los académicos. Se presta especial atención a la investigación sobre si las decisiones de los tribunales ucranianos pueden definirse como un precedente y si tienen, a su vez, una fuerza vinculante para todas las personas. Por lo tanto, interesó el análisis de la naturaleza jurídica de las decisiones del Tribunal Europeo de Derechos Humanos, el Tribunal Constitucional de Ucrania, el Tribunal Supremo y los tribunales administrativos. El estudio utilizó métodos científicos generales y especiales, cuya base es la aplicación de los resultados de la investigación teórica y otra información generalizada sobre las fuentes del derecho en Ucrania. Los autores concluyen que estas decisiones tienen una naturaleza diferente a las sentencias del sistema de derecho común. Aunque algunas decisiones judiciales de los tribunales ucranianos tienden a poseer algunos elementos del precedente y son vinculantes, no solo para las partes del caso sino para todas las personas. Esto permite caracterizar estas decisiones judiciales como fuentes complementarias del derecho.

Palabras clave: precedente; fuente de derecho; tribunal administrativo; decisión judicial; relaciones jurídicas en Ucrania.

Introduction

The world's legal systems are not static, they are developing all the time, interacting with each other. The Anglo-Saxon legal system does not recognize the precedent as the sole source of law. Statues and acts of legislation play an essential role in the regulation of social relations, thus creating a numerous group of law sources. New precedents might also emerge based on legislative provisions. Therefore, the Continental legal system, applied in most European countries, is paying more attention to judicial precedents as sources of law. In this way, it becomes an important source for judicial application and interpretation in other cases.

The convergence of Roman-German and Anglo-Saxon law systems makes them closer. This interpenetration allows them to combine their characteristics to create effective normative regulation, protection of rights and freedoms of individuals. Hence, it is important to research the role, which the precedent plays in the Ukrainian legal system, its influence on other sources of law and the scope of its application by Ukrainian courts.

One of the most important tasks of all modern states is to establish obligatory legal rules to provide order and regulation of relationships between the subjects of law. For this reason, it is necessary to make them clear and accessible to everyone. The sources of law are a form of legal rules existence, their formulation for further application and usage in everyday life. Hans Kelsen stated that state creates law to obey it (Kelsen, 1967). This is also known as a self-reliance concept of a state.

1. Literature overview

The term "source of law" is believed to have been introduced by a Roman historian Titus Livius, who formulated the Law of the Twelve Tables as "*fons omnis publici privatique iuris*" (from Latin – the source of both private and public law). Later it has been widely used as "*fontes juris*" (the source of law) (Hearn, 1883: 31); (Scott, 2001: 213).

There is no common understanding of the term "source of law" because of different approaches to its understanding (Mikhaylovskiy, 1914: 237). The theory of law describes the source of law as an external form of legal norm expression (Parkhomenko, 2008). A. Scott in his paperback in 1885 stated that this term has two meanings: firstly, it is the source law derives from, secondly, it is the source of our knowledge of law and its reflection (Hearn, 1883).

Under the sources of law, we understand a set of obligatory legal provisions, contained in the act of the competent subject or a few subjects, which create, amend, postpone or abolish a legal norm. Hence, the source of law is characterized by the following features:

1. It is a written act.
2. It is adopted by an officially empowered public body or its official.
3. Obligatory for all subjects.
4. Normativity, which means its ability to regulate relations between all the subjects in the state.
5. Numerous applications.
6. All sources create a single system.

7. Limitation of its validity in time, space and concerning the persons covered.

Among all sources of law, applied in Ukraine and other civil law states, legislative acts and international treaties play the most significant role. Therefore, judicial precedent as the law enforcement act becomes an important source of law establishing judicial unity in all cases solved by courts. At the same time the judicial precedent, which is a result of judicial activity, increases its influence on all spheres of public life. Thus, the article aims to research whether the judicial precedent may be regarded as a source of law and its role as a normative regulator.

2. Legal nature of judicial decisions, judicial practice, and judicial precedent

The issue of judicial acts as a source of law is not new in legal literature, but we should focus more on legal practice to research this issue. Today the importance of judicial acts might be experienced more in practice, as there still prevails a position in the scientific literature, that judicial acts are the only source of law in the Anglo-Saxon countries. That approach was typical for the Soviet law researchers. For example, R. Livshytz argues that:

> The Soviet state has never known such a source of law as a judicial precedent, which leads to the deviation from the principles of law and undermines the role of the representative bodies of the state in legislative activity. Socialist judiciary administers justice as a form of application of law unrelated to the law-making power of the court in the resolution of specific cases (Livshitz, 1997: 49).

Indeed, the role of justice in a totalitarian state cannot be significant. Courts were obliged to obey normative acts and were to make decisions in their scopes. Even today many scholars state that there is no ground for judicial precedents to be acknowledged as the source of law. And, even when the court decisions overturn regulations, O. Konstantyy (2005) notes, "it cannot be said that such decisions contain rules of law and are legally binding in similar situations" (Konstantyy, 2005: 68-69). A well-known scholar of the administrative law of Ukraine emphasizes that judicial precedent cannot be regarded as a source of law in the legal system of Ukraine. Thus, special attention shall be paid to decisions of the Constitutional Court of Ukraine, which tend to be sources of law in the future. He also argues that this issue requires some further research (Averyanov, 2004).

At the same time, we should answer the question whether there is a necessity of determination of the legal nature of judicial decisions? Do they influence other cases, solved by courts? Is there a practical need for

the legalization of the precedent in the countries with the continental law system following the example of Ukraine? To answer these questions, we should do some research on the legal conclusions of the Supreme Court in an exemplary case when deciding a typical administrative case; consideration of findings, set out in rulings of the Supreme Court, regarding the application of legal norms of law; application of the decisions of the European Court of Human Rights (ECHR): decisions and conclusions of the Constitutional Court of Ukraine and application of court decisions abolishing normative acts or their provisions.

In these cases, in our opinion, judicial decisions might acquire a binding effect on all subjects of law. Hence, the following issue arises: can we regard the above-mentioned types of judicial decisions as judicial precedents?

In the theory of law, a judicial precedent is classified as a source of law. It is defined as:

> The method of external expression and consolidation of the individual rule of conduct, which is established by the competent authority of the State for the settlement of a specific situation, which becomes obligatory in the regulation of similar specific life situations (Lutz *et al.*, 2003: 77-78).

Historically judicial precedent is one of the most important sources of law. That is the judicial decision, not only of the highest courts, but it becomes binding on all other similar cases in the future. Here arises the question, what is the difference between the judicial precedent and judicial decision in continental law countries? Firstly, the precedent is the result of the law-making process, performed by a judge, instead of civil law systems, where judges make decisions based on legislative acts.

These decisions, in general, are not obligatory for other similar cases. Secondly, a judicial decision in common law legal systems has a different structure. It consists of *ratio decidendi* and *obiter dictum*. *Ratio decidendi* is the essential part of the judgement as it is legal reasoning of judge's ruling, while *obiter dictum* is a Latin phrase which means "that which is said in passing", a passage in a judicial opinion which is not necessary for the decision of the case before the court (Encyclopaedia Britannica).

Under Ukrainian legislation, there are four parts of judgement: introductory, descriptive, explanatory, and operative (Code of Administrative Proceedings of Ukraine, 2005). The Supreme Court in Ukraine often separates different parts of their decisions: the chronology of the case, the position of the parties, relevant sources of law and acts of their application, the opinion of the Supreme Court (Ruling of the Supreme Court, 2019). It should be stressed that the last one is very similar to the *ratio decidendi* in the common law systems.

The denial of the possibility of imposing binding judicial decisions in Ukraine has often been justified by the provisions of Article 129 of the previous edition of the Ukrainian Constitution, which determined that judges in the administration of justice are independent and are the subjects to legislation only. At the same time, the legislator eliminated this "atavism" of legal positivism, having accepted changes to the Constitution of Ukraine in 2016. Now the Constitution states "the judge, while administering justice, is independent and is guided by the rule of law". This allows judges to apply not only legislative acts but also other sources of law. Does that mean a deviation from what Francis Bacon said about judges of civil law systems, that judges should remember that their case is "*jus dicere*" and not "jus dare" (Bacon, 1978: 476)?

In other words, they shall rather apply and interpret the law, than establish a new legal rule. Benjamin Cardozo wrote that the judge creates a law where there are no legal acts, precedents, or other formal sources of law (Cardozo, 1921). In any event, an abstract legal norm cannot regulate all aspects of life and the judge, solving a case, applies it from his internal conviction. Application of law is not a mechanical work but requires deep understanding and interpretation of a legal norm.

Some Ukrainian scholars offer to reject the idea of introducing the judicial precedent in Ukrainian law, for example, V. Belianevych suggests that this idea should be abandoned due to the ambiguous approach to it by scholars and judges. Instead, he proposes to pay more attention to the judicial practice as a source of law (Belianevych, 2014). This requires that we should make further research on what is a judicial practice and whether it may be regarded as a source of Ukrainian law. According to the Ukrainian "Legal Encyclopedia" it is defined as a practice of judicial bodies in the administration of justice.

This means it is a set of separate judgements creating together a unified approach of case resolving in different areas. Therefore, a single judgment does not become a pattern for all other cases. And even if there are hundreds of equal decisions it does not have a binding effect on other courts. Hence, we cannot define some judgements in similar cases as a judicial precedent. In fact, the judicial practice reveals the specifics of judgements in common spheres, the unity in the judicial system and the similarity of approaches in filling gaps and other defects of the legislation. The only exception from this is the judicial practice of ECHR, which is directly defined in Ukrainian law as a source of law. Though this question requires some further research.

In France and other countries of the civil legal system, the doctrine of "*jurisprudence constante*" got wide dissemination. This term is translated as a well-established practice, namely these are some decisions which in their interconnection create a certain sequence of cases. It is not mandatory for the application but may be used with the authority it has acquired (Reshota,

2015: 99). In our opinion, "jurisprudence constante" is a synonym to what in Ukraine is known as the "judicial practice".

The next issue to be answered in this article is whether separate judgements have a binding effect on all subjects of law in Ukraine?

Considering a specific case, the administrative court may "recognize the legal act unlawful and invalid completely or in its certain part of" (Article 264 of the Code of Administrative Proceedings of Ukraine, 2005). The loss the legal force of the act affects not only the parties of the proceeding but also an undefined range of law subjects. That is, a court may interfere with the existence of a "defective" legal act based on the application of interested persons and resolve the issue under such an act or individual provisions thereof. In this case, the decision of a court will be generally binding, affecting an undetermined number of persons. This leads to the conclusion that some judgements may be attributed to sources of law. Although, it should be underlined, that these judgements have a derivative (subsidiary) nature from the primary sources of law (legislative acts, international treaties) since it must remedy the defect of the existing rule of law rather than regulate social relations on its initiative.

We would like to highlight the following features of judgements as sources of law:

- They are derivative (subsidiary) from primary sources of law (legislative acts, international treaties).
- They intend to fill legal gaps, conflicts of law and other regulatory deficiencies, including the application of the analogy of law.
- Maybe also applied in other similar legal relations.
- Specify the legal norm, «inhaling life in it», when applied in a specific case.
- May affect the operation of legal acts or their provisions.
- Are binding in the application by both the courts and the public administration.
- They are published in official publications, on the Internet and the Single State Register of Judicial Decisions (Single State Register of Judicial Decisions).

Therefore, not every single judgement will have a binding effect on an indefinite range of persons. For this reason, it is important to specify these judicial decisions to determine their relevance to sources of law.

3. The practice of the European Court of Human Rights as a source of law in Ukraine

When the Code of Administrative Proceedings of Ukraine was adopted in 2005 it created a legal basis for Ukrainian courts to apply the case law of the ECHR. The provision of Article 6 of the above-mentioned Act enabled courts to apply the rule of law considering the case-law of the European Court of Human Rights. At first, it was very unusual for judges to apply judgments as a source of law instead of a legislative act.

That is the reason why later it became a usual practice and nowadays the application of the case-law of the ECHR is common. In 2016 the Ukrainian and Helsinki Human Rights Union together with the Higher Court of Ukraine researched the best application of the practice of the ECHR by Ukrainian judges (Precedent UA – 2016, 2017).

Legal frameworks for the application of not only the European Convention on Human Rights but also of the ECHR case-law was established by the Law of Ukraine "On the execution of decision and application of the practice of the European Court of Human Rights" (2006). Article 17 of this Law specified the essence of the ECHR case law. It states that courts in Ukraine apply both the Convention and practice of the ECHR as sources of law. The practice of ECHR is significant in the application and interpretation of the Convention.

It helps to understand some provisions of the Conventions, it broadens them, makes them applicable for modern living conditions. Nevertheless, the ECHR case law is based on the Convention and hence has subsidiary nature. We should stress the fact that not a single ECHR judgment is recognized as a source of law by the Law, but as its practice in general. Hence, courts shall apply the decisions of the ECHR, considering all the decisions on the subject, including new ones, which might overrule the previous Court position.

It is necessary to stress the fact, that not only the decisions where Ukraine is a party are recognized as the source of law, but all decisions of the ECHR. The Law of Ukraine "On the execution of decision and application of the practice of the European Court of Human Rights" defines the practice of the ECHR as the whole practice of the European Court of Human Rights and the European Commission on Human Rights (On execution of decision and application of the practice of the European Court of Human Rights, 2006).

Nevertheless, sometimes judges refuse to apply the practice of the ECHR in the cases, where Ukraine was not a party to the case. For instance, in court decision of the former Supreme Court of Ukraine, ruled on April 21, 2016, the Court refused to apply cases "Podbielski and PPU Polpure v. Poland", "Kreuz v. Poland" and "FC Mretebi vs. Georgia" due to their non-

obligatory character as Ukraine was not a party in those cases and they cases weren't officially published in Ukraine (Decision of the Supreme Court of Ukraine, 2016). Therefore, this decision contradicts Article 18 of the above-mentioned Law, which states that courts shall apply official translations of the ECHR and the Commission, but in case of their absence they shall apply the original text. At the same time, this provision might create problems for judges who are not fluent in the English or French languages.

4. Decisions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine is a single body providing supremacy of the Constitution of Ukraine, official interpretation of the Constitution and conformity with the Constitution of Ukraine, the laws of Ukraine and other acts. The Law of Ukraine "On the Constitutional Court of Ukraine" defines the following acts of the Court: decisions, conclusions, court rulings, interim orders and orders relating to all other matters not related to the constitutional proceedings, among them, the decisions of the Constitutional Court of Ukraine on the constitutionality of the laws of Ukraine and other acts of the Supreme Council of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine and the Supreme Council of the Autonomous Republic of Crimea are of great importance; official interpretation of the Constitution of Ukraine; constitutional complaints. As a result of the recognition of the unconstitutional nature of a normative act or its certain provisions thereof, they lose their force.

In such a case, the judgement of the Constitutional Court will be binding not only on the parties of the case but will also affect the operation of the act and in this way shall be obligatory for all subjects who apply the act. In this case, the Constitutional Court is named by some scholars as a «negative legislator» (Shevchuk, 2002: 238). Besides that, the former head of the Constitutional Court of Ukraine S. Shevchuk states that the Court becomes a "positive legislator" exercising a normative control, in which the interpretation of the relevant legal norms to be applied is extended and additional argumentation is provided», that is the official interpretation of the Constitution of Ukraine. We should also stress that acts of the Constitutional Court of Ukraine are obligatory for execution and cannot be appealed. This makes judgements of the Court often binding on all subjects and courts in other related cases. Except that, the Court in his decisions often refers to his previous judgements, which resembles a precedent practice of the ECHR. The Law "On Constitutional Court of Ukraine" stresses the formal part of the Court decision, which is called a juridical position of the Court and resembles *ratio decidendi* in common law countries.

5. Acts of the Supreme Court and administrative courts as a source of law

First of all, we should highlight that the Supreme Court in Ukraine was created in 2017 instead of its predecessor the Supreme Court of Ukraine. It was the result of a judicial reform and a restart of the judiciary in Ukraine. All judicial proceedings codes got many amendments, and this allowed to look on the role of the Supreme Court acts from a new perspective. This reform aimed to establish unity of the judicial practice in the law enforcement process.

Previously the highest Court of Ukraine tried to unify its practice in special plenary resolutions, which were of recommendatory nature for lower courts. We can reveal its legal nature better on a practical example. In 2011 one person appealed to administrative court asking to abolish some provisions of Supreme Court plenary resolution on judicial practice on property crimes. In this case, the court decided that the resolution was recommendatory regarding the application of legislation by the courts in the administration of justice and did not determine the rights and obligations of the participants of the process; did not create any legal consequence and was not binding on the claimant (Decision of the District Administrative Court of Kyiv, 2011).

A judicial reform in Ukraine, which was implemented in 2016-2017 has changed the legal nature of the Supreme Court decisions. Firstly, we should understand the role of rulings of the Supreme Court.

According to the Part 5 and Part 6 of Article 13 of the Law of Ukraine "On Judiciary and Status of Judges": "The conclusions on the application of legal norms, outlined in the rulings of the Supreme Court, are binding on all subjects of power, who apply in their activity a legal act. At the same time, these rulings are considered by other courts when applying corresponding norms of law" (On the Judiciary and the Status of Judges, 2016).

Therefore, the Supreme Court rulings are binding on public administration bodies, which reinforces their importance as a source of law. It should be stressed that these rulings are binding on public administration, but courts should only take them into account when applying the relevant rules of law.

At the same time, there are no legal consequences for both the court of the first instance and the appellate court when they are even unreasonable or without any motives and do not consider the legal position of the Supreme Court. This underlines the "limited binding effect" of the Supreme Court rulings. Moreover, subjects of the private law are not obliged to obey the Supreme Court decisions, where they are not the parties to the case.

This leads us the conclusion that rulings of the Supreme Court in Ukraine might be defined rather as a law-enforcement precedent than a precedent in common law countries. They are more an example for other courts on how to apply legal norms in specific cases rather than a new legal ruling.

Surprisingly, the Supreme Court often finds a way to avoid legislative provisions. For example, the Cassation Administrative Court of the Supreme Court in its ruling held on 19 July 2018, stated that the court of appeals, applying the rule of the proceeding code, found excessive formalism and disproportion between the means of used and the intended purpose. In this case, the court of appeal returned the appeal complaint as it was submitted directly to the appeal court instead of the procedure underlined in the paragraph 15.5 of Section XIII "Transitional Provisions" of the Civil Proceedings Code of Ukraine (Decision of the Supreme Court of Ukraine, 2018).

This paragraph obliges all persons to submit appeal complaints through the court of the first instance before the day the Unified Judicial Information and Telecommunication System starts functioning. But the court of cassation claimed that a person may submit an appeal complaint either directly to the court of appeal or through the court of the first instance.

The next kind of Supreme Court acts are exemplary judgements in administrative cases. The institute of typical and exemplary cases is a new one in the judicial process of Ukraine. It was established in 2017 after the amendments to the Code of Administrative Proceedings of Ukraine (2005).

The main purpose of typical and exemplary proceedings is to expedite and simplify the process of similar cases before the court. Unlike the conclusions on the application of legal norms outlined in the rulings of the Supreme Court, the exemplary decision has certain peculiarities. While the rulings of the Supreme Court containing conclusions on the application of the law may be considered by the courts when deciding a case, exemplary rulings provide a model in the following rulings of typical administrative cases. It would be incorrect not to take into account the conclusions contained in the model decision of the Supreme Court may be challenged in appeal and cassation proceedings (Article 291 of the Code of Administrative Proceedings of Ukraine, 2005).

It is crucial to note that the Supreme Court makes an exemplary decision under certain conditions. First, there should be a few similar administrative cases in one or different administrative courts. In that case, lower administrative courts submit cases to the Supreme Court, and it determines if they are typical. Otherwise, the Supreme Court resolves the case as the court of the first instance and takes an exemplary decision, which shall be applied in all typical cases.

Hence, judgements in typical and exemplary administrative proceedings have a big impact on other similar court cases. It may be regarded as a step towards the legalization of the judicial precedent in Ukraine. This means that a court does not just consider the position of the Supreme Court, but it is obliged to apply its rulings in all the cases defined by the Supreme Court as typical. If it refuses to do so, its decision might be abolished by the court of a higher instance.

Although the lawmaker did not intend to introduce the judicial precedent in the Ukrainian judicial system, it has many features of it. Therefore, it is necessary to underline that this step was caused by some practical needs. In particular, the courts have simultaneously dealt with thousands of similar claims, expending their time and resources on the parties, but often have developed divergent and contradictory practices. But later the Court of Cassation issued its own decision, which became the point of reference for the lower courts, and only then it became clear that all efforts of lower courts were just in vain.

By contrast, the institution of exemplary decision becomes both a guide and a safety-guard against excessive expenditure by the parties and the court itself. These results offer compelling evidence for the special nature of the Supreme Court exemplary decisions as a source of law.

The next kind of Supreme Court decision we should take into consideration are the decisions of the Cassation Administrative Court of the Supreme Court as the court of the first instance recognized decisions, actions or inactions of the Supreme Council of Ukraine, the President of Ukraine, the High Council of Justice, and the High Qualification Commission of Judges of Ukraine fully or partially illegal and invalid.

Thus, the Supreme Court may decide on their compliance with the legislative acts, but not their constitutionality as it is the competence of the Constitutional Court of Ukraine. As a result, the corresponding normative act or some of its provisions may lose validity. In such a case, the decision of the Supreme Court will have its binding force not only on the parties of the judicial case but on all persons, to whom this act could be applied. In this way, the Supreme Court gets the so-called "negative" legislative power to abolish the normative act. The same situation concerns the lower administrative courts which may find an act, decision or inaction of any public body or their officials illegal. Hence, the decisions of all administrative courts, not only those of the Supreme Court may have a binding effect.

Conclusions

We would like to stress the fact that allowing courts to form binding legal opinions may have some threats or negative consequences in an unstable judicial system. This could lead to contradictory, opposed positions on the similar issues of different or even the same court. The evidence from this study leads to the conclusion that the decisions of Ukrainian courts are not the source of law in its classical sense. The article states that such decisions are derived from the legal norm, but at the same time they shall be considered in law judicial enforcement. The recognition of public administration body acts, actions, or inactions as illegal and invalid is at the same time mandatory for all persons, including the persons of private law.

Unlike the common law system, courts in Ukraine are not empowered to create new rules of law. This leads to the conclusion that they cannot be attributed to the judicial precedent in its classical sense. Nevertheless, they may be defined as the law enforcement and interpretative precedents because the courts may specify, supplement, generalize the rule of conduct contained in the relevant source of law.

Therefore, court decisions in Ukraine should be considered as a complementary source of law, the application of which is derived from the main source of law. The concretization of the legal norm is a form of judicial interpretation of an existing rule, but not the creation of a new one. The so-called "negative law-making" process of the Constitutional Court of Ukraine and administrative courts means the abolition of the existing rule of law, but not the formation of a new rule of conduct. Thus, we believe that today it is worth defining the derivative (auxiliary) role of a court decision as a source of law in Ukraine.

This also leads to the reconsideration of the classical concept of the source of public law and defining it as a set of mandatory regulations contained in a written act of a competent subject or several subjects that create, change, suspend or terminate the legal norm.

It's necessary to conclude that not all judicial decisions would become a source of law, but only those which change, suspend or terminate the legal norm, stated in the legal act. The following should be added to these decisions: the practice of the European Court of Human Rights, decisions and conclusions of the Constitutional Court of Ukraine, rulings of the Supreme Court containing legal opinion, exemplary decisions of the Supreme Court and judgements of administrative courts abolishing normative acts or their provisions.

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The use of the mechanism of public-private partnership in the investment processes management in the context of digitalization

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Abstract

The study substantiates the principles of using the mechanism of public-private partnership in the management of investment processes in the context of digitalization. It is determined that digitalization gives an opportunity to reconsider the principles of modern concepts of management decisions and views on various economic processes and relations in society, to get a faster and optimal attraction of financial resources. Obstacles to the use of the mechanism of public-private partnership in the management of investment processes in the context of macro-level digitalization, which are in the plane of institutional management of public-private partnership. Macro-level barriers that arise on the part of private partners in attracting investment resources through the use of public-private partnerships in the context of digitalization have been identified. The directions of elimination of obstacles of macro- and microlevels are offered. The list of conditions that must be taken into account when attracting investment resources in terms of public-private partnership in the context of digitalization is substantiated.

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El uso del mecanismo de colaboración público-privada en la gestión de procesos de inversión en el contexto de la digitalización

Resumen

El estudio fundamenta los principios de la utilización del mecanismo de asociación público-privada en la gestión de los procesos de inversión en el contexto de la digitalización. Se determina que la digitalización brinda la oportunidad de reconsiderar los principios de los conceptos modernos de decisiones de gestión y visiones sobre diversos procesos económicos y relaciones en la sociedad, para obtener una atracción más rápida y óptima de los recursos financieros. Obstáculos al uso del mecanismo de asociación público-privada en la gestión de procesos de inversión en el contexto de la digitalización a nivel macro, que se encuentran en el plano de la gestión institucional de la asociación público-privada. Se han identificado barreras a nivel macro que surgen por parte de los socios privados para atraer recursos de inversión mediante el uso de asociaciones público-privadas en el contexto de la digitalización. Se ofrecen las direcciones de eliminación de obstáculos de macro y micro niveles. Se fundamenta la lista de condiciones que deben tenerse en cuenta a la hora de atraer recursos de inversión en términos de asociación público-privada en el contexto de la digitalización.

Palabras clave: recursos de inversión, gestión, asociación público-privada, mecanismo de atracción, digitalización.

Introduction

The development of economic systems, the achievement of stable rates and stability of economic growth can be achieved by investing in various spheres of social development. Global trends in economic systems prove the importance and necessity of digitalization of all spheres of economic activity. It is digitalization that makes it possible to improve, accelerate, and intensify diverse processes, including attracting investment resources using the mechanism of public-private partnership. Digitization makes it possible to reconsider the principles of modern concepts of decision-making and views on various economic processes and relations in society, to obtain faster and optimal financing.

Investment resources are no exception. The development of the digital economy has many different tasks, including accelerating economic growth and attracting investment resources. Today, it is impossible to imagine the further development of investment relations and partnerships between the private and public sectors without digitalization.

The main purpose of this study is to substantiate the principles of using the mechanism of public-private partnership in the management of investment processes in the context of digitalization. To achieve this goal, the following tasks were performed: macro-level obstacles in the area of institutional management of public-private partnership, as well as macro-level obstacles that arise from private partners in attracting investment resources through public-private partnership in the context of digitalization; directions of elimination of obstacles at macro- and micro-levels in the conditions of digitalization are offered; the list of conditions that must be taken into account when attracting investment resources in terms of public-private partnership in the context of digitalization is substantiated.

1. Literature Review

The study of the peculiarities of the use of the mechanism of public-private partnership in the management of investment processes is an extremely relevant and topical issue. Many scientific publications of prominent scientists are devoted to these issues and their role in regional development in the conditions of digitalization, among which it should be noted: Abramova (2021); Adebayo (2021); Ahmad (2020); Akinsola (2021); Albalate (2020); Arefieva (2021); Armand (2020); Belyaev (2020); Chen (2021); Chunling (2021); Cosmulese (2019); Dergaliuk (2021); Djakona (2020); Dubyna (2017); Fedyshyn (2019); Fleta-Asín (2021); Gasilov (2017); Grigoraș-Ichim (2018); Khan (2020); Khanin (2021); Kholiavko (2021); Khudolei (2021); Kovalenko (2021); Kychko (2021); Mashnenkov (2021); Popelo (2017); Qin (2021); Raza (2021); Samiilenko (2021); Samoilovych (2021); Sergei (2020); Shahbaz (2020); Shkarlet (2018); Silaghi (2021); Sresakoolchai (2020); Tarasenko (2017); Tulchynckiy (2021); Tulchynska (2021); Van Song (2021); Zhuk (2018) and others.

In the article (Sergei *et al.,* 2020), scientists propose to use the benefits of public-private partnership, its application, considering regional specifics on the example of the rail freight market as a meso-level institution. The authors have developed models of legal regulation of investments in transport projects, which will contribute to the spatial expansion of markets by obtaining a systemic economic and legal effect. The aim of the article (Gasilov *et al.,* 2017) is to develop approaches to risk management of public-private partnership projects. The authors proved that the greatest risks arise at the stage of investing projects.

Due to the classification of risks at the stage of investing in public-private partnership projects, effective methods of leveling the negative consequences of risk manifestations are proposed. The authors' research (Chunling *et al.,* 2021) shows a significant positive relationship between public-private investment in energy and the environmental footprint in the long and short term. The authors argue that increased public-private investment in energy affects Pakistan's environmental sustainability.

Researchers (Chen, 2021) have shown that public-private partnerships are an important policy tool that promotes sustainable economic development. According to the analysis, the authors note that there is a good trend of improvement, reflecting the economic sustainability of investment in infrastructure, and public-private partnerships have played an important role in these processes. The scientists' article (Fleta-Asín *et al.,* 2021) is based on a study of the determinants of private investment participation in public-private partnership projects in renewable energy sources. According to the authors, it can be argued that public-private partnerships, which are smaller and younger, show a greater degree of participation of private investors. In such circumstances, the private partner assumes more responsibility, and the main source of income - from payments to electricity consumers.

The authors (Raza *et al.,* 2021) examine the causal relationship between public-private partnership investments in the energy sector in individual developing countries. Scientists use nonparametric causal relationships in quantiles and methods of linear causal relationships. The authors of the article conclude that public-private partnership investments in non-renewable energy sources in some countries contribute to carbon emissions and worsen the environment. In the study (Adebayo *et al.*, 2021), the authors analyze the causal links to identify the impact of public-private investment in energy, renewable energy consumption, technological innovation. According to the study, the authors recommend encouraging the consumption of renewable energy, paying more attention to technological innovation.

The basis of the study (Van Song *et al.,* 2021) is to determine the role of public-private partnership investment and environmental innovation. The authors argue that, according to long-term assessments, GDP and PPIs are causing greater environmental depletion in terms of CO2 emissions and haze pollution. The authors argue that short-term estimates of past carbon emissions have a significant positive relationship with their current values. The authors' research (Akinsola *et al.,* 2021) evaluates the impact of public-private partnerships in energy and financial development on the environmental situation in Brazil.

The authors study the role of renewable energy and economic growth. Scientists recommend the creation of a forum that will promote the

development of public-private partnerships and promote cooperation with new initiatives based on environmental technological innovations. The authors of the article (Belyaev *et al.,* 2020) study the current state and features of the development of public-private partnership in the regions. In the study, scientists analyzed the main financial and investment statistical indicators of the formation and functioning of public-private partnership. The authors of the article propose to rank the regions, including not only the level and scope of public-private partnership, but also the volume of real innovation projects and indicators of innovative development of the region.

2. Results

If we assess more thoroughly such a model of budget allocations in the management of investment processes in the context of digitalization, as a public-private partnership, we can identify certain obstacles to the spread of this model of investment. Thus, the macro-level obstacles that lie in the plane of institutional governance, ie on the part of the state, are the following (Fig. 1):

- Imperfection of institutional support, which is manifested in the underdevelopment of the legislative field for the dissemination of the model of public-private partnership.
- Inconsistency of the national legislative field with the principles and approaches of international law.
- Weakness of human rights practice and legal support of documentation on public-private partnership investment project agreements.
- Unwillingness of the authorities to partner with the private sector and implement investment projects.
- Lack of clear division of powers and areas of responsibility between public authorities and the private partner.
- Insufficient level of coordination in public authorities in coordinating investment projects of public-private partnership.
- Unsatisfactory level of attention of the authorities to the management and implementation of investment policy, including at the level of local governments in the field of public-private partnership.
- Unpreparedness of the authorities and low level of competence of civil servants in the field of public-private partnership.
- Lack of experience in the field of public-private partnership.

- Deficit of state and local budgets, which complicates and slows down the attraction of investment resources in projects using the model of public-private partnership.
- Imperfection of methodological support of procedures for approval of investment projects with the participation of public-private partnership.

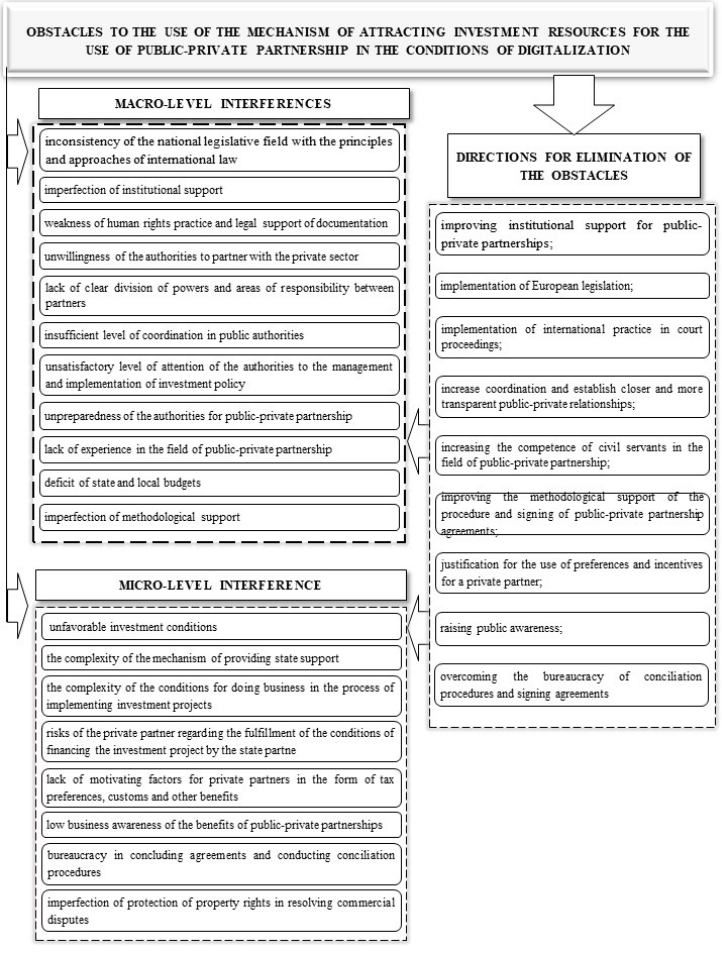

Fig. 1. Obstacles to the use of the mechanism of attracting investment resources through the use of public-private partnership in the context of digitalization and directions for their elimination.

Source: developed by the authors.

Micro-level barriers that lie in the plane of partnerships on the part of private partners are:

- Unfavorable investment conditions caused by global, political and other conditions of economic development, which lead to a decrease in investment activity of private partners.
- The complexity of the mechanism of providing state support for investment projects.
- Complexity of business conditions in the process of investment projects, as there are no guarantees of timely obtaining permits and necessary approvals from local governments or executive authorities to implement the investment project in terms of public-private partnership. Most often, delays occur on the permits of land use, which participates in the investment project.
- Risks of the private partner regarding the fulfillment of the conditions of financing of the investment project by the state partner, which is connected with the time intervals of approval of the budget planning and possible non-fulfillment of obligations.
- Lack of motivating factors for private partners in the form of tax preferences, customs and other benefits when concluding investment projects with the participation of public-private partnership.
- Low awareness of business about the benefits of attracting investment projects using public-private partnerships.
- Bureaucracy in concluding agreements and conducting conciliation procedures, as well as the possibility of corruption schemes;
- Imperfection of protection of property rights in resolving commercial disputes and litigation of other claims.

With the development of digitalization of the economy, most of the obstacles at both the micro and macro levels can be removed. Directions for eliminating obstacles at the macro and micro levels in terms of digitization can be:

- Improvement of institutional support for the implementation of public-private partnership.
- Implementation of European legislation, which would strengthen the legislative support of investment processes with the participation of public-private partnership.
- Implementation of international practice on court proceedings on public-private partnership investment projects.
- Increasing coordination and establishing closer and transparent

relations between the public and private sectors.

- Increasing the competence of civil servants in the field of public-private partnership.
- Improvement of methodological support of the procedure and signing of public-private partnership agreements.
- Justification for the use of preferences and incentives for the private partner in the direction of intensifying investment activity within the public-private partnership.
- Raising public awareness of the opportunities and benefits of attracting investment resources through public-private partnerships insocial, economic and environmental spheres of social development.
- Overcoming the bureaucracy of conducting conciliation procedures and signing agreements.

Involvement of the mechanism of attraction of investment resources under the conditions of use of public-private partnership provides certain tools of distribution of risks of the investment project and duties between public and private partners. Attracting investment resources on the basis of public-private partnership makes it possible to transfer the management of public facilities to a private partner. At the same time, there are certain conditions that must be taken into account when attracting investment resources in terms of public-private partnership in terms of digitalization (Fig. 2).

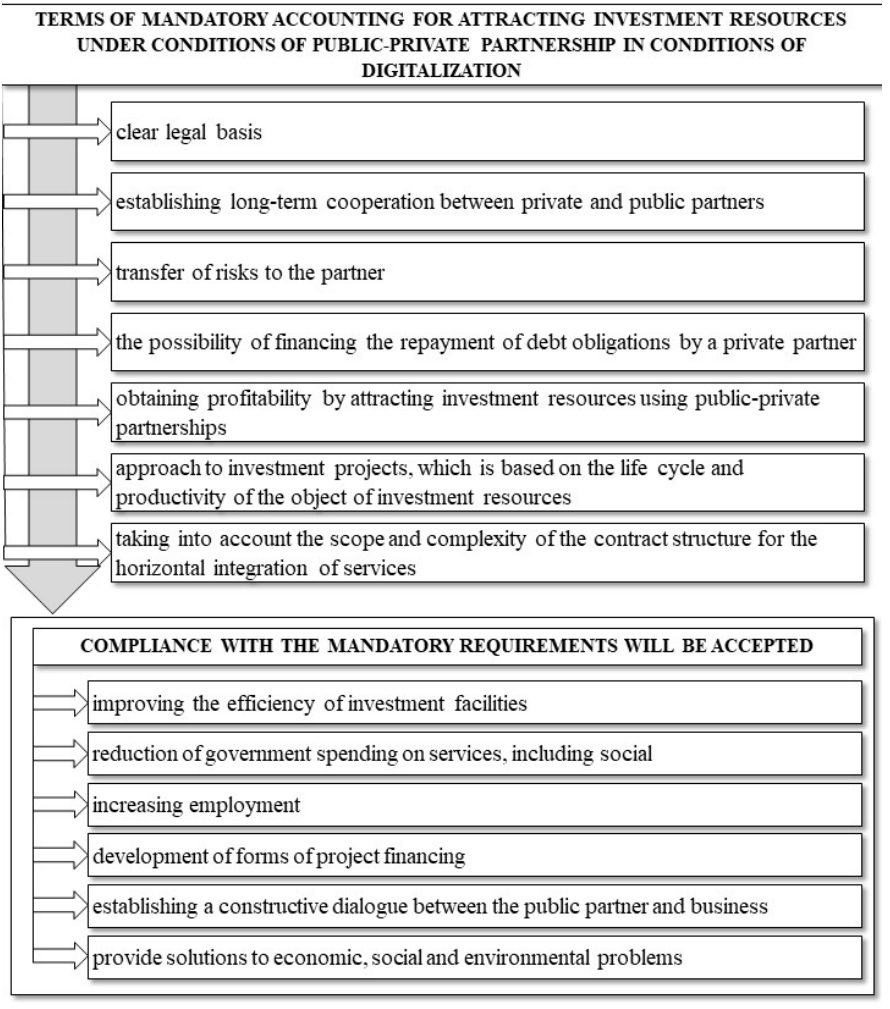

Fig. 2. Mandatory conditions that must be considered when attracting investment resources in terms of public-private partnership in terms of digitalization.

Source: developed by the authors.

These prerequisites include:

Firstly, the legal basis is a clear legal basis. For the implementation of investment projects with the participation of public-private partnership, a

very important factor in the approval and conclusion of agreements is the clarity of the legal basis of such contracts. Prior to the conclusion of public-private partnership agreements, it is important to carefully study the legal framework before preparing the documentation for the investment project. This further makes it possible to avoid legal problems when signing a contract and implementing an investment project with the involvement of public-private partnership.

Secondly, establishing long-term cooperation. The key condition under which public-private partnership investment projects are possible is long-term cooperation between private and public partners. Establishing cooperation makes it possible to achieve the maximum effect of attracting investment resources and get the maximum value for money. In cases where the investment project is long-term, which is a characteristic feature of public-private partnership, sometimes there may be situations that lead to change. Fruitful coordinated interaction between partners is a mandatory and necessary condition for such cooperation.

Thirdly, the transfer of risks. One of the important positive differences of public-private partnership investment is the possibility of transferring part of the risks to another partner. Most of the risks are borne by the party that is in the best position to assess and counteract it, as well as to respond quickly to the consequences of its occurrence and action. One of the requirements for the approval of public-private partnership agreements is the ability of one of the parties to which the risks are transferred to control the possibility of their occurrence and be responsible for their consequences.

Fourthly, the ability of a private partner to finance the repayment of debt. When using investment resources on the basis of public-private partnership and the risks assumed, the private partner expects a corresponding return in the form of return of invested investment resources with the appropriate interest. Under the conditions of attracting investment resources on the basis of public-private partnership, usually about half of the costs of fixed assets under the investment project) is financed by the equity of the private partner and borrowed investment resources. Usually the percentage of financing costs depends on the level of risk, guarantees and many other factors. Debt collateral to a private partner can also be provided by an international financial organization, as well as through the debt instruments market.

But usually any lender conducts a comprehensive legal and financial evaluation of each component of the investment project to check the ability of the investment project to bring the appropriate profit that will allow to repay debts. If there is a significant risk of insufficient profits from a public-private partnership investment project to cover costs and to obtain the appropriate profitability of the project, it is necessary to support the public partner to repay the debt obligations of the private partner;

Fifthly, obtaining profitability by attracting investment resources through public-private partnerships. As you know, the main purpose of investing is to make a profit. At the same time, various mechanisms can be used to ensure the receipt of investment income. For example, due to the collection of profits over a long period, it may be in the form of fares, ticket sales, advertising, etc., depending on the object and form of the investment project. Also, the income from the investment project can be obtained as a result of payments for operational readiness.

Also, income for a private partner can be supplemented by government funding and other various forms of government support, such as subsidies, subsidies, or tax and customs benefits. Both methods of obtaining a return on an investment project can be used. It should be noted that a possible decision to ensure the income of a private partner in attracting investment resources through public-private partnership can be a political decision and has a significant impact on the financial structure of the investment project and, consequently, its viability in general;

Sixthly, the approach to investment projects, which is based on the life cycle and productivity of the object of investment resources. In contrast to the model of public allocations on the basis of public procurement in the implementation of investment projects in terms of attracting investment resources on the basis of public-private partnership in terms of digitalization, the results of the investment project are defined as some initial value.

That is, the main conditions under such an investment model are not technical parameters, but indicators of productivity of the object of investment resources. This allows you to use the innovative potential of the private partner, his creativity in work and decision-making, management and financing experience by choosing the provider of services, works or products that would offer the best life cycle value for the cost of attracting investment resources digitization.

Seventhly, taking into account the scope and complexity of the contract structure for the horizontal integration of services. Attracting investment resources on the basis of public-private partnership in the context of digitalization can be structured both vertically and horizontally. The ability to attract investment resources using the mechanism of public-private partnership in the context of digitalization makes it possible to ensure full horizontal integration of services of one of the parties from initial design to financing and provision of services such as final operation of the investment object and its maintenance.

Horizontal integration of services allows optimizing the incentive, which is based on the achievement of certain technical indicators for the effective transfer of risk to the private party. And also to coordinate such activities by private companies at a lower price than the price offered by the

public partner. Private partners are better prepared to respond to economic challenges and risks. However, such integration and provision of services complicates the implementation of the investment project in terms of attracting investment resources on the basis of public-private partnership in the context of digitalization.

Conclusion

These conditions, which must be taken into account when attracting investment resources in a public-private partnership in the context of digitalization, help reduce the risk of attracting investment resources. Such prerequisites include: a clear legal basis; establishing long-term cooperation between private and public partners; transfer of risks to the partner; the possibility of financing the repayment of debt obligations by a private partner; obtaining profitability by attracting investment resources using public-private partnerships; approach to investment projects, which is based on the life cycle and productivity of the object of investment resources; taking into account the scope and complexity of the contract structure for horizontal integration of services.

The scientific novelty of the above study is to substantiate the principles of public-private partnership in the management of investment processes in the context of digitalization, which provides ways to eliminate obstacles to the use of public-private partnership at the macro and micro levels in digitalization and compliance with basic conditions when attracting investment resources in terms of public-private partnership in terms of digitalization.

The above will increase the efficiency of investment facilities, reduce government spending on services, including socially necessary, increase employment, develop forms of project financing, establish a constructive dialogue between the public partner and business, and ensure the solution of economic, social and environmental issues.

Further research requires issues of increasing the interest of public and private partnerships and intensification of investment processes in the context of digitalization.

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The use of electronic evidence in court: a comparative legal analysis in the world practice

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Abstract

The article is devoted to such a topical issue as the use of electronic evidence in court. The purpose of the article is to determine the basic principles of electronic evidence, study domestic and foreign legislation on the use of electronic evidence in court, determine their place in the system of evidence, and identify problems with evidence in court. It was found that electronic evidence should be understood as factual data that are displayed in digital forms and recorded on any type of media, as well as after processing by electronic computers become possible and accessible to human perception. It has been established that in most of the European countries we study, electronic evidence is unquestionably classified as written and is not singled out. It has been identified that electronic documents have the same legal force in some countries as paper documents. It was concluded that in Azerbaijan the procedure for collecting and examining electronic evidence in domestic proceedings should be improved to avoid various technical errors, as well as to strengthen cybersecurity measures and increase basic knowledge of judges in the field of information technology.

Keywords: electronic testing; electronic document; factual data authenticity of proof; digital justice.

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El uso de la prueba electrónica en los tribunales: un análisis jurídico comparativo en la práctica internacional

Resumen

El artículo está dedicado a un tema tan actual como el uso de las pruebas electrónicas en los tribunales. El propósito del artículo fue determinar los principios básicos de las pruebas electrónicas, estudiar la legislación sobre el uso de estas pruebas en los tribunales, determinar su lugar en el sistema judicial e identificar los problemas comunes. Se ha constatado que la prueba electrónica debe entenderse como los datos fácticos que se muestran en formas digitales y se registran en cualquier tipo de soporte, así como después de que el procesamiento por ordenadores electrónicos sea posible y accesible a la percepción humana. Se ha establecido que en la mayoría de los países europeos que estudiamos, las pruebas electrónicas se clasifican indiscutiblemente como escritas y no se singularizan. Se ha identificado que los documentos electrónicos tienen la misma fuerza legal en algunos países que los documentos en papel. Se ha llegado a la conclusión de que en Azerbaiyán debería mejorarse el procedimiento de recogida y examen de las pruebas electrónicas en los procedimientos nacionales para evitar diversos errores técnicos, así como para reforzar las medidas de ciberseguridad y aumentar los conocimientos básicos de los jueces.

Palabras clave: prueba electrónica; documento electrónico; datos fácticos; autenticidad de la prueba; justicia digital.

Introduction

One of the central issues in modern law is the importance of determining the reliability of electronic evidence. To identify problems and controversies in the field of domestic legislation, it is important to understand and investigate the practice of using this type of evidence in other countries.

The introduction of electronic evidence into the criminal proceedings of the Republic of Azerbaijan is a necessary reaction to the digitalization of the public space: crimes are increasingly committed in the Internet environment, using gadgets.

Therefore, the realization of comparative legal analysis in other European countries and highlighting all aspects of this legal phenomenon should contribute to the improvement of electronic evidence used, the main purpose of which is to improve the institute of legal proceedings and its implementation within the framework of law, the vector of which should be aimed at protecting human rights and freedoms.

The efforts of modern jurists are aimed at considering the problems of reliability of electronic evidence.

The article aims to determine the basic principles of the use of electronic means of proof, the study of domestic and foreign legislation on the use of electronic evidence in court proceedings, determining their place in the system of means of proof, and identification of problems in proving in court. The object of the study is evidence as a structural component of judicial proceedings aimed at establishing the circumstances of a civil case. The subject of study - electronic means of proof in civil proceedings.

The methodological basis of the study consisted of the system-structural method, which allowed to determine the place of electronic means of proof in the structure of the institute of proof, and the dogmatic method, which allowed the interpretation of the relationship between the inner content and form of the phenomena under study.

1. Results

At present, mankind can observe a significant leap in the field of information technology. The era of the Internet and digitalization began to dictate its rules in modern society. It is very hard to believe, but if you look at the legal framework of different countries around the world some twenty or thirty years ago, it will be clear that at that time many norms of behavior did not exist because of the lack of social needs for that.

Also, in the law there is a dualistic understanding of the legal regulation - in one case, the electronic medium is material evidence, and in the other - another document. In turn, in practice, judges recognize as evidence screenshots of correspondence in a social network, without specifying in what form this evidence was attached to the materials of the criminal case.

It should be noted that thanks to such information leap in the world, we can talk about the importance of using certain types of electronic information, in the sphere of legal relations, i.e., we are talking about electronic evidence.

It should be noted that such types of evidence differ from other types of evidence to a certain extent. So, it should be said that electronic evidence is considered certain texts, photographs, voice or sound recordings, or video recordings (Vernydubov and Belikova, 2018).

By “electronic evidence should be understood factual data that are digitally displayed and recorded on any type of medium, and after processing by electronic computer technology become possible and accessible to human perception” (Vernydubov and Belikova, 2018: 300).

To be fair, it should be noted that the phrase "factual data" is also used by the Russian legislator setting forth the concept of evidence in relation to proceedings on cases of administrative offenses. In our view, this is the result of the influence of the lapsed Soviet legislation, where the concept of evidence was defined similarly.

The legislator of the Republic of Azerbaijan did a more original thing. In the definition, which defines the evidence in general, he stated that credible evidence (information, documents, things) is recognized as such (Article 124 of the Criminal Procedure Code of Azerbaijan Republic). By the way, this definition is consistent with the concepts of certain types of evidence.

In addition, scholar Hetmantsev (2019) believes that electronic evidence should be considered as the medium itself, that is, the source of certain information that has a weighty evidentiary value. We mean the information available in the form of relevant oral speech, written signs, and so on.

Ibadzade (2016), examines the system of criminal procedural evidence under the current legislation of the Republic of Azerbaijan, analyzes the main approaches existing in the doctrine of criminal procedure, definitions of evidence, describes in detail the features of certain types of criminal procedural evidence.

It should be noted that nowadays such an important social factor as the dynamic development of information technologies has greatly influenced the very important institute of legal proceedings in the world. A new aspect in the legal activity of which is the use of electronic evidence in court proceedings, which leads to the realization of the right to defense of both natural and legal persons (Vernydubov and Belikova, 2018).

It should be noted that the use of evidence in court proceedings in electronic form is not considered the newest and modern in foreign countries. The process of electronic proceedings has relieved justice agencies from performing unnecessary paperwork and helped to use the latest technology during the judicial process.

Next, let's look at the application of evidence in electronic format by the example of developed countries of the world, such as the United States of America, as well as European countries like Germany, France, England, as well as Hungary, and Ukraine.

First, it should be noted that one of the significant examples of the use of electronic evidence is considered the experience of the United States of America (hereinafter - the USA). By the way, the U.S. is considered one of the leading countries implementing scientific and technological progress. In addition, the U.S. has a well-developed evidentiary system (Eliseev, 2004).

It is worth mentioning that in fact, the practice of using electronic evidence had already begun to exist in the states since 1960. At that time, it

was associated with electronic computers. In addition, there is a document (codification act) in the United States called: Federal Rules of Evidence. This act defines the procedural evidentiary procedure, which specifically states that records and written documents must consist of words or letters, or handwritten equivalents, as well as typing, photographing, electronic recording or magnetic pulse, etc. (Code of Criminal Procedure of the Republic, 2000).

Thus, we can conclude that during the trial electronic evidence indisputably refers to written evidence and does not distinguish it as a separate type.

It should be noted that the reliability and admissibility of electronic evidence is recognized and implemented based on judicial case law specific to the United States, given that country's legal system.

It is recognized that in the 1970s, scientific sources, U.S. judges were asked a question about what exactly concerns the admissibility of evidence. Thus, subsequently, during court proceedings, it was recognized by the courts that because information output using electronic computer technology is perceived by a person audibly or visually, it is considered that such information is written evidence and must meet the criteria of admissibility of evidence (Nechyporuk, 2020).

2. Discussion

Thus, due to this approach in understanding electronic evidence, it is considered that attributing electronic evidence to copies or originals makes no sense. This approach has greatly simplified the process of establishing the admissibility of electronic evidence and contributed to achieving the main goal of US proceedings, i.e., protection of violated rights, freedoms, and interests of the citizens of this country (Dobie, 1939).

Having analyzed the norms of civil procedure of Germany, it should be noted that there is no concept of electronic evidence, but the definition of "electronic document" was enshrined in the Code of Civil Procedure of Germany, which noted that any data, information contained in electronic form and content that can be read repeatedly and with the use of written signs should be referred to electronic documents(Vernydubov and Belikova, 2018).

In particular, the regulation states that:

> If preparatory written petitions and attachments thereto, petitions, party statements, information, data, reports, and third-party declarations are required to be in writing and are submitted as electronic documents, they must contain a qualified electronic signature in accordance with the Electronic Signature Act (Schlotterbeck and Mansinne, 1970: 6).

The code establishes that there are types of such electronic documents, namely: public and private electronic documents, and documents that are executed using electronic mail. The signs of validity are considered to be that such documents must be contained in documents and private records set out electronically and have circumstances and qualified electronic signature set out in a sent message of electronic form with a "De Mail" account registered by a natural person and registered for a certain person (Moskovchuk, 2020).

Thus, it should be noted that having analyzed the German Code of Civil Procedure we can say that the electronic evidence (document) is considered reliable provided that there is a certain qualified electronic signature.

Compared with German legislation, given the French Republic, namely the practice of electronic evidence in France, it should be noted here that such documents are signed and should not be specifically linked to certain technological means due to the fact that electronic documents have the same legal force as paper documents (Eliseev, 2004).

Thus, the law of the French Republic, namely the Civil Code, establishes that written evidence should be understood as a certain sequence of symbols, letters, or other signs endowed with a certain meaning and regardless of how they are fixed and transmitted (Timmerbeil, 2003).

In addition, there is an interesting practice in France regarding the authenticity of electronic evidence. Such an issue arises if the court doubts the authenticity of the evidence or if the other party to the process wants to appeal its authenticity. One of the most common ways to establish authenticity is considered testimony, which must have some information that is considered evidence. This method applies to all types of electronic evidence.

For example, a litigant may submit to the court a photo of a screenshot from a website that may contain information that confirms or disproves a certain fact. Then the court, at its discretion, considers whether it is necessary to confirm the authenticity of such a photo with a screenshot. As a rule, in practice, it is often enough that the party itself indicates the link to the site where the information was obtained, and the judge himself checks its presence on the site (Kazachuk, 2014).

Thus, the French legislator made it clear that here the practice of evidence does not have a special distinction between paper and electronic documents, which simplifies the judicial process and does not contribute to delaying cases, which is similar to the same practice of electronic evidence in the USA.

Regarding the English legislation on electronic evidence the Evidence in Civil Cases Act 1968 should be mentioned here. According to this Law,

the use of the information included in the documents produced by a computer is considered acceptable for the protection of the legal interests of the persons. Such a rule existed until 1995. Today, the above-mentioned issue is regulated by the Civil Evidence Act, which also allows the use of information processed by electronic computer technology (David, 1973).

Regarding Ukraine, it should be noted that there is a clearly established notion that electronic evidence should be considered as information in digital or electronic form which must contain certain data regarding the circumstances relevant to the case. Such types of evidence include, but are not limited to, electronic documents such as graphic images, text documents, photographs, plans, and sound or video recordings. In addition, it should also include web pages, multimedia, text or voice messages, and databases. The above information may be stored on servers and portable devices such as a memory card, cell phone, etc. (Polyshchuk and Kylyvnyk, 2019).

At present, as we noted above, there is no unified approach to the understanding of electronic "evidence". On the other hand, we cannot fail to note a different approach to resolving this issue. Thus, the Code of Criminal Procedure of the Republic of Azerbaijan (Criminal Procedure Code of the Republic of Azerbaijan, 2000) enshrined the following postulate: the documents are paper, electronic, and other carriers reflected in alphabetic, numerical, graphic, and other data which may be of importance for criminal proceedings (Part 1, Article 135 of the Criminal Procedure Code of the Republic of Azerbaijan). Interesting is the regulation of physical evidence issue in CPC of Azerbaijan Republic: the documents that have particularities, foreseen by article 128.1 of CPC of Azerbaijan Republic (Part 135.2 of Article 135 of CPC of Azerbaijan Republic) might also be considered physical evidence (Criminal Procedure Code of Azerbaijan Republic, 2000).

Analyzing domestic judicial practice, we can conclude about the ambiguity of deciding questions about the admissibility of such evidence. Here are a few examples:

1. Most of the courts of the first instance do not consider printouts from the Internet, for example:
    - The district administrative court of Kyiv did not take into account the printouts from the articles of the unknown author of the social network "Facebook". The court considered that such information is not evidence.
    - The Svyatoshinskiy District Court concluded that the information on social networks is inadmissible evidence since their validity cannot be verified.
2. On the other hand, the second part of judges believes that such evidence should be used at trial, for example:

- Vinnitsa City Court of Vinnitsa region issued a decision, according to which were taken and examined printouts of screenshots from accounts of the network "Facebook"
- and the Novonikolaevsky district court of Zaporizhzhia region established the fact of hostile relations between two persons based on photo printouts from a conversation in a social network (Hetmantsev, 2019).

Vernydubov and Belikova (2018) concluded in their article that the procedure for collecting and examining electronic evidence in domestic proceedings should be improved precisely to avoid various technical errors, as well as to strengthen measures in cybersecurity issues and increase judges' basic knowledge of information technology.

Conclusion

Having studied the legal framework of countries such as the United States, Germany, France, England, and the Republic of Azerbaijan, let us summarize:

- In the U.S., during a trial, electronic evidence is definitely considered to be written evidence and is not distinguished as a separate type. Attributing electronic evidence to copies or originals makes no sense. This approach has greatly simplified the process of establishing the admissibility of electronic evidence and has contributed to achieving the main goal of US proceedings, i.e., protection of violated rights, freedoms, and interests of the citizens of this country.
- In Germany, electronic evidence (document) is considered reliable if a certain qualified electronic signature exists.
- In France, electronic documents are signed and do not have to be specifically linked to certain technological means due to the fact that electronic documents have the same legal force as paper documents. One of the most common ways to establish authenticity is through witness testimony, which must have certain information that counts as evidence. This method is applicable to all types of electronic evidence. Here the practice of evidence has no particular distinction between paper and electronic documents, which simplifies the judicial process and does not contribute to delaying cases, which is similar to the same practice of electronic evidence in the U.S.
- In Ukraine, it can be concluded that there is ambiguity in deciding on the admissibility of such evidence. The procedure of collection and examination of electronic evidence in domestic proceedings

should be improved to avoid various technical errors, as well as to strengthen measures in cybersecurity issues and increase the basic knowledge of judges in the field of information technology.

- In the future this issue should be considered from the side of making additions to the legislative framework of Ukraine, to improve all the gaps in the question of electronic evidence and the implementation of the regulatory framework for their admissibility.

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Public policy settlement of social conflicts in the context of national security

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Abstract

Using an analytical methodology, the article examines the connection between social conflicts and national security. The discursive space of the problems of social conflict has been systematized and the reasons that influence the dynamics and duration of social conflict have been determined. Complex systems of social conflict prevention are presented and a model of influence of social conflicts on the national security system of the state is developed. The driving forces of social conflicts and national security indicators are also grouped together. The sequence of conceptualization of the results of the institutionalization of the public management of social conflicts has been announced. The methodology and levels of assessment of the willingness of the authorities of public management of social conflicts for interaction are indicated. It is concluded that, since there is currently no single criterion for assessing the impact of the interaction of public management institutions on the prevention of social conflicts in the context of national security, the study of the capacity for such interaction should be carried out considering conditions of complexity, systemic and convergence.

Keywords: public administration; social conflicts; national security; interaction; context.

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Solución de políticas públicas de conflictos sociales en el contexto de la seguridad nacional

Resumen

Mediante una metodología analítica, el artículo examina la conexión entre los conflictos sociales y la seguridad nacional. Se ha sistematizado el espacio discursivo de los problemas del conflicto social y se han determinado las razones que influyen en la dinámica y duración del conflicto social. Se presentan los sistemas complejos de prevención de conflictos sociales y se desarrolla un modelo de influencia de los conflictos sociales en el sistema de seguridad nacional del estado. También se agrupan las fuerzas impulsoras de los conflictos sociales y los indicadores de seguridad nacional. Se ha dado a conocer la secuencia de conceptualización de los resultados de la institucionalización de la gestión pública de los conflictos sociales. Se indica la metodología y los niveles de valoración de la disposición de las autoridades de gestión pública de conflictos sociales para la interacción. Se concluye que, dado que en la actualidad no existe un criterio único para evaluar el impacto de la interacción de las instituciones de gestión pública en la prevención de conflictos sociales en el contexto de la seguridad nacional, el estudio de la capacidad para dicha interacción debe realizarse teniendo en cuenta condiciones de complejidad, sistémica y convergencia.

Palabras clave: administración pública; conflictos sociales; seguridad nacional; interacción; contexto.

Introduction

Society is characterized by the growth of conflict, which should be understood as a social crisis due to transformation of the political system, economic relations, geopolitical space, and culture. Complications of human life, inconsistency of existing concepts of national security, strategies, and programs of socio-economic development to the challenges of modern change increase the level of conflict in society (Novak-Kalyayeva *at al.,* 2018). Ontologically, social conflict and national security are closely intertwined. At the same time, an adequate level of national security (protection of society) significantly reduces conflict, primarily minimizing the likelihood of arising antagonistic conflicts in the country, aimed at the mutual destruction of social opponents.

The development of mechanisms for preventing social conflicts in the context of national security should play a key role in the modern system of public administration. That is, an effective system of mechanisms for preventing social conflicts, which is implemented in cooperation with the

public, is one of the most important means of ensuring stability, social peace, and security of the state.

Usually, synchronicity of the conflict course of sociogenesis is manifested through the weakening of the level of protection of vital interests of society and the state from destructive endogenous and exogenous factors (Beglytsia *at al.,* 2021). Conflict itself is a deviation from the normal state of the system, a problem of society, a signal that there is pathology, a threat that is the impetus for radical change (Citrin, 2001).

Systematization of the provisions of scientific schools (structural functionalism, Marxism, microfunctionalism, applied sociology, neo-Weberian sociology) to the analysis of social conflicts has made it possible to identify the following characteristics of conflict: 1) conflict indicates important changes; 2) conflict is commonplace and takes place in everyone's life; 3) conflict is deviation; 4) conflict is inherent in all social relations. Thus, social conflict is an integral part of even the most democratic society. However, civilized democracy is designed to neutralize its risks.

The systematization of the discourse space on the study of social conflicts as an object of public administration and their negative impact on national security is presented in Fig. 1.

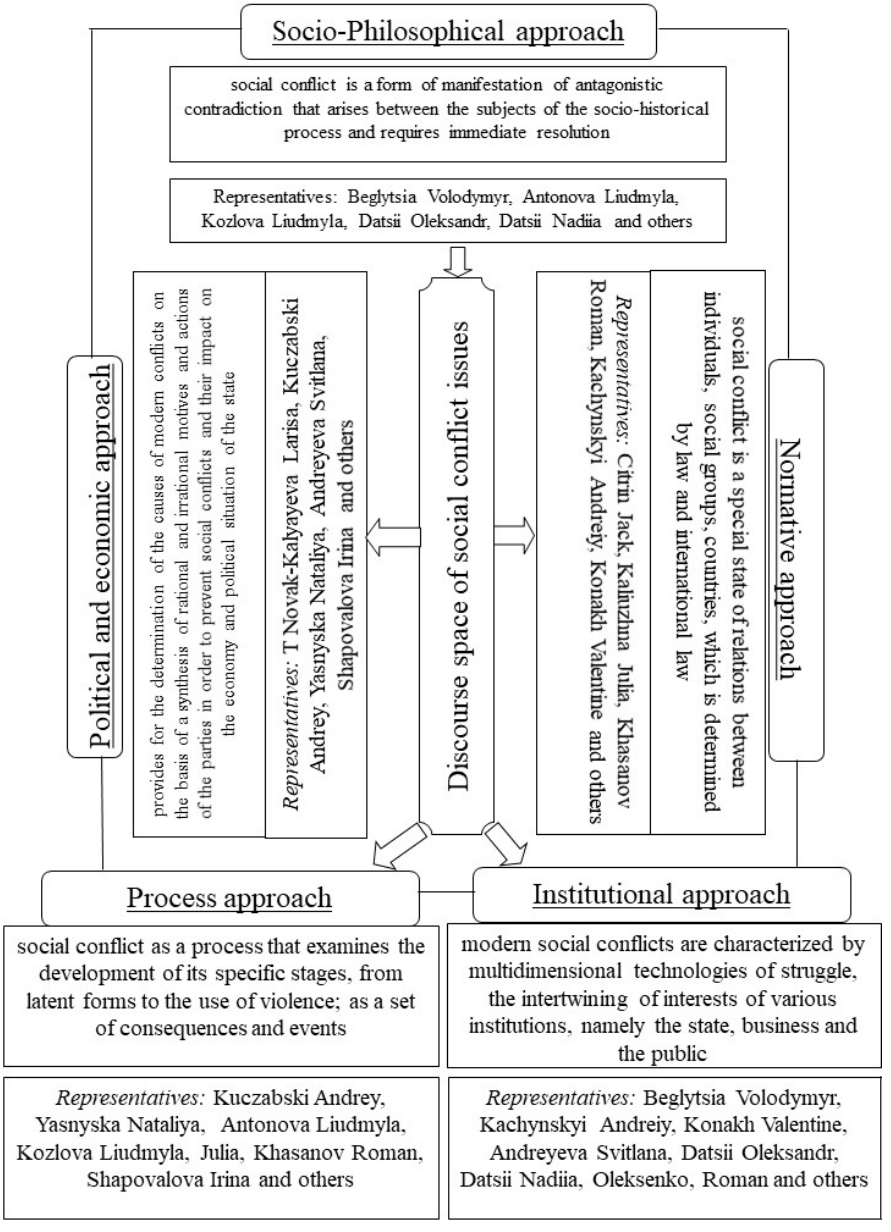

Fig. 1. Generalization of the discourse space of social conflict as an object of public administration.

Source: author's elaboration

The set of reasons that lead to contradictions in the relationship and affect the dynamics and duration of the conflict are presented in Fig.2. If one of the participants (individuals), social groups has a force that significantly exceeds the strength of the enemy, he may begin exacerbating the conflict to intimidate the enemy and prevent possible confrontation.

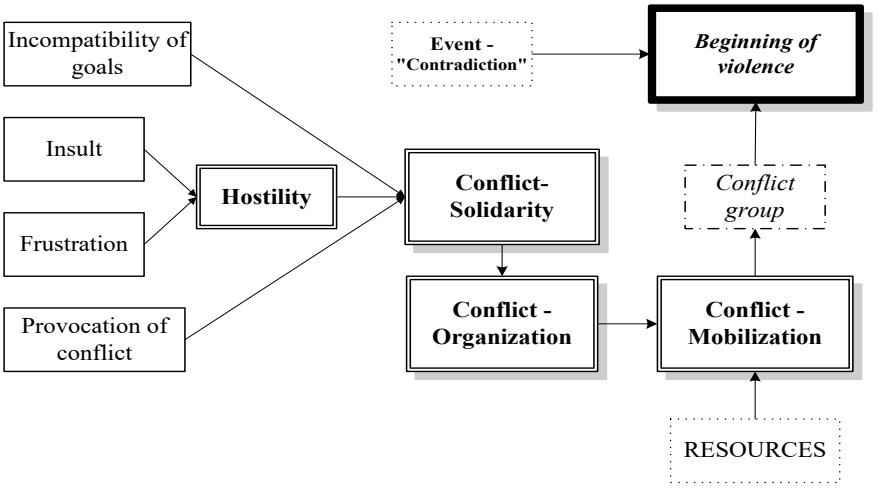

Fig.2. Reasons generating contradictions in relationships and affecting the dynamics and duration of social conflict.

Source: author's elaboration

Social conflict presents its substantive basis through key stages of development. According to the studies of scientists, it is possible to distinguish four stages of such development: pre-conflict, conflict, solution, post-conflict. At the same time, the peculiarity of social conflict is its consideration as a cyclical phenomenon, as it sometimes turns into a cyclical form of development. This occurs when unresolved issues arise within the social process because of some reasons. They form a kind of cycle: pre-conflict situation, aggravation of relations, transformation of values, change of interests, and conflict resolution (Kaliuzhna, 2017).

Thus, in their content, social conflicts play a very important role in the life of society, its functioning and development, and therefore they cannot be considered only as an inevitable evil, as a social pathology that has a destructive effect on society, which can be eliminated in society once and for all. That is, social conflict is quite natural and logical in the public system, defining its destabilizing role, we emphasize while in its content it is always an organizing form of civilization progress.

Studying the world's practical experience, we note that specialists of governmental, intergovernmental, international, and non-governmental organizations take part in the development of social conflict prevention systems. To summarize the results of the study, we have systematized modern systems for preventing social conflicts that are used in the world (Table 1) (Khasanov, 2019).

It is important to emphasize that social conflict management in the context of national security can be assessed in terms of both effectiveness and efficiency. At the same time, scientists do not consider the assessment in terms of the ability of public management institutions (primarily public authorities, local governments, and civil society institutions) to neutralize social conflicts. It should be noted that the question of assessing public management of social conflicts in the context of economic security has never received an unambiguous answer in the literature. This situation is to some extent explained by the complexity of society as a subject and object of public management and its multifaceted nature. Hence the search for a local criterion for assessing the impact of the interaction of public management institutions on the prevention of social conflicts in the context of national security (Peace and Conflict Impact Assessment (PCIA) Handbook, 2013).

Table 1. Comprehensive systems for preventing social conflicts in the world

<table>
<tr><th>Governmental systems</th><th>Intergovernmental systems</th><th>Systems of non-governmental organizations</th></tr>
<tr><td rowspan="4">System of Diagnostics and Prevention of Social Conflicts Systeme d'Alerte Precoce (SAP), The Ministry of the Armed Forces (France)</td><td rowspan="4">United Nations Development Program, Conflict Monitoring Systems in individual countries (Kyrgyzstan, Ukraine, Bolivia, Kenya, Ghana). UN, Human Rights Committee, Global Conflict Diagnosis System</td><td>FEWER: (Eurasia, Russia)</td></tr>
<tr><td>FEWER: Africa</td></tr>
<tr><td>Conflict Diagnosis and Analysis System, Switzerland</td></tr>
<tr><td>Human Security Program in Sri Lanka</td></tr>
<tr><td rowspan="2">Crisis Prevention System, The Federal Ministry for Economic Cooperation and Development of Germany</td><td>European Union: list of unstable countries</td><td>The Foundation for Tolerance International (Kyrgyzstan)</td></tr>
<tr><td>AU: Continental Conflict Diagnosis and Prevention System</td><td>West African Conflict Early Warning and Early Response System (Ghana)</td></tr>
</table>

List of unstable countries, United States Government, The National Intelligence Council	OSCE, Conflict Prevention System	Ethnological Monitoring Network (Russia)
	SEEAS: Conflict Prevention System in Central Africa	The International Crisis Group (Belgium)

Source: author's elaboration.

1. Objectives

Therefore, the aim of the proposed study is to analyze the transformation and effectiveness of public policy settlement of social conflicts in the context of national security.

2. Materials and methods

In this context, we have a correlation between social conflicts and methods of their resolving based on a systematic understanding of socio-political factors affecting national security (Fig. 3).

As there is currently no single criterion for assessing the impact of interaction of public management institutions on the prevention of social conflicts in the context of national security, the study of the capacity for such interaction should be carried out taking into account conditions of complexity, system city and convergence. Further, it is proposed to consider the method of assessing the readiness of public management of social conflicts to interact. This method allows assessing basic knowledge and skills of the participants of such interaction, which will contribute to obtaining the best results.

The key components of diagnosis should be the theoretical, methodological, and psychological readiness of the institutions of interaction. Diagnostic parameters are a system of knowledge and skills that are assessed on a tribal scale. Each of the diagnostic parameters is estimated by a coefficient (K1, K2, K3), which is calculated by the formula:

$$K_n = \frac{\sum points}{\text{maximum possible number of points}}, \quad (1)$$

where Σ points – total number of points

After calculating the coefficient of each of the blocks, the average coefficient is calculated by the formula:

$$K = \frac{K_1 + K_2 + K_3}{3}, \qquad (2)$$

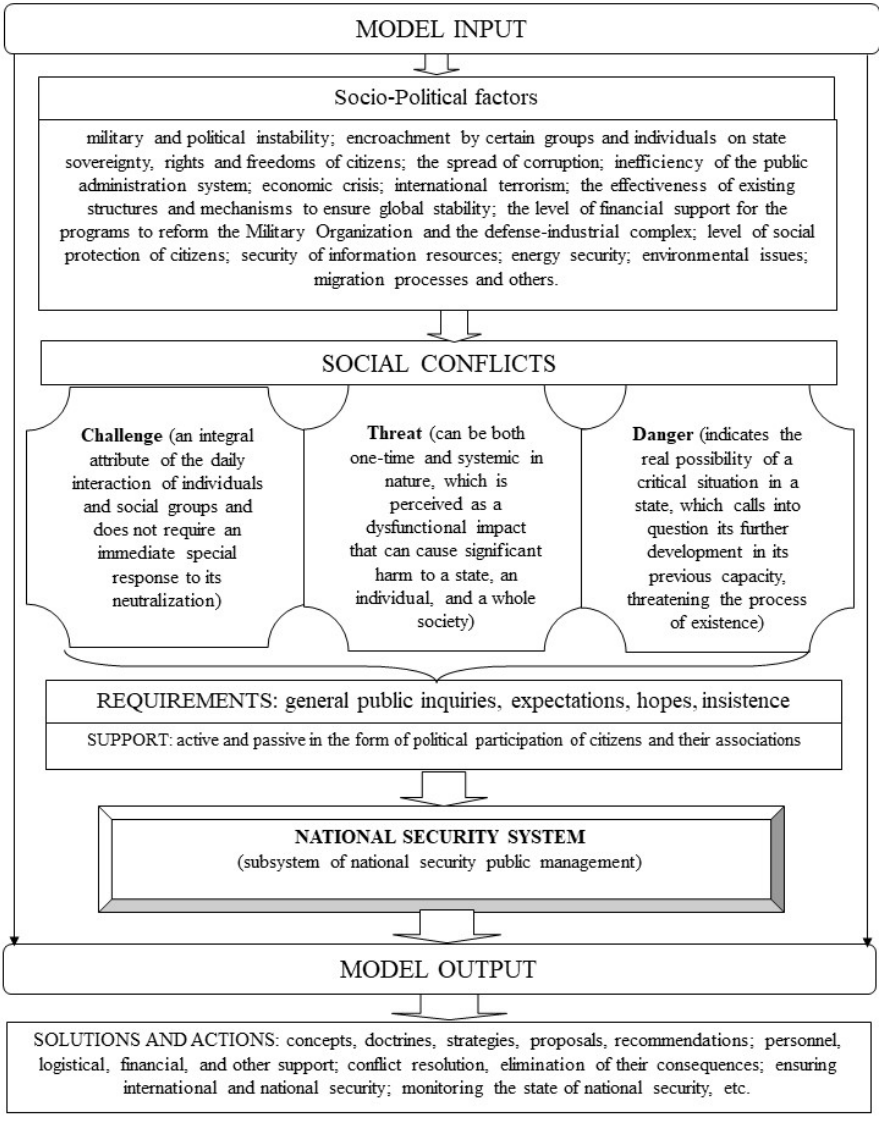

Fig. 3. Model of influence of social conflicts on the system of national security of the state.

Source: author's elaboration

Based on the value of the average coefficient obtained, it is possible to determine the levels of readiness for the interaction of public management institutions to prevent conflict. If the value of the coefficient is within: 1) 0.8 - 1 points - the level of readiness is optimal; 2) 0.6 - 0.7 points, the level is acceptable; 3) less than 0.6 points - the level is critical. To obtain objective data, such diagnostics requires a long process of monitoring the interaction and accumulation of diagnostic data. It should be noted that not all diagnostic parameters are easy to assess during the observation of the interaction process, so it is advisable at the first stage to conduct an interview with the participants of the interaction on issues that reflect the content of the indicators of this method.

3. Results and discussion

The current environment is characterized by growing uncertainty and instability, caused primarily by the impact of globalization, expanding conflict space, increasing tensions in international relations, destruction of established structures, as well as changes in the nature of information and communication in human society. As a result, it destroys security balance both separate countries and the world as a whole, so an important characteristic of public management is ability to interact within the system to prevent social conflicts and ensure national security. We propose to consider the effectiveness of public management of social conflicts as ability to change in accordance with the needs of civil society.

The use of social conflict as an important factor of national danger is presented by us through a system of factors and indicators (Fig. 4).

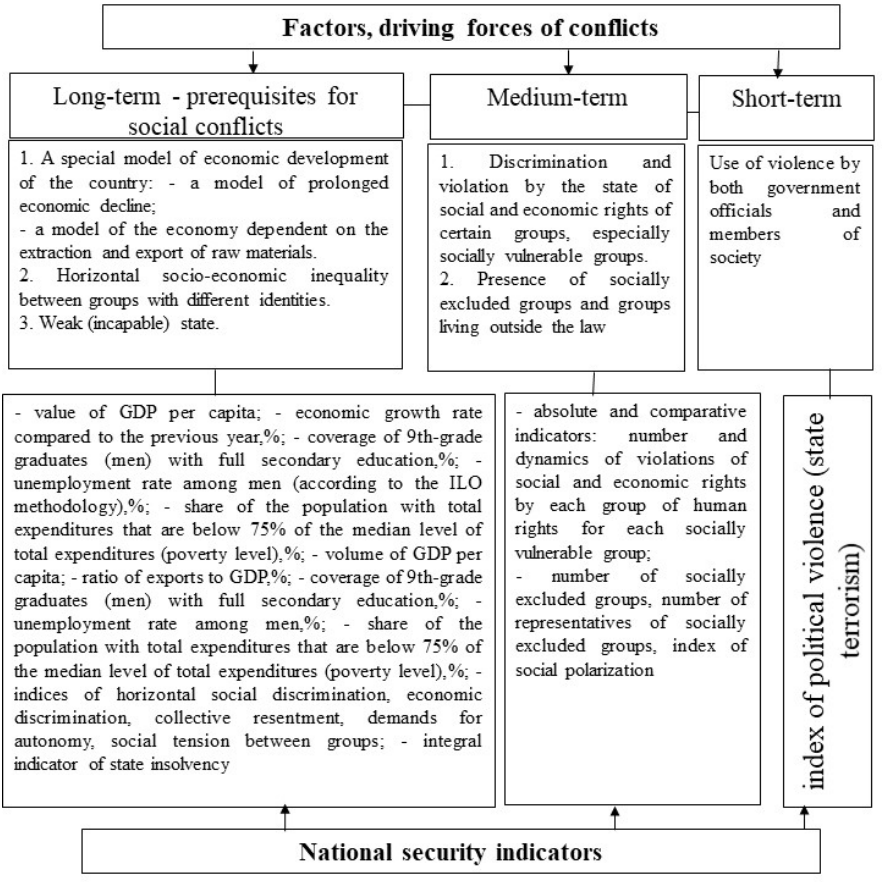

Fig.4. Driving forces of social conflicts and indicators of national security (Kachynskyi, 2013).

The implementation and protection of human rights must be at the heart of the national security assessment system. After all, first of all, it is a person who has a complex set of individual goals, motives for socio-economic discrimination, opportunities, and expectations, makes decisions about participation in the conflict; secondly, the goal of socio-economic development of the country is not only the absolute growth of indicators but also a fair optimal distribution of growth results among different segments of the population. A person who believes that his or her rights are being violated and that the state has failed to enforce socio-economic rights to ensure them decides to take part in the conflict.

The institutions of public management of social conflicts include representatives of public authorities, local governments, and civil society institutions, which within their powers in the process of social dialogue provide solutions to problems of social conflicts and their management. The objects of social conflict management are the population of the country (Fig. 5) (Decree of the President of Ukraine, 2015; Konakh, 2016).

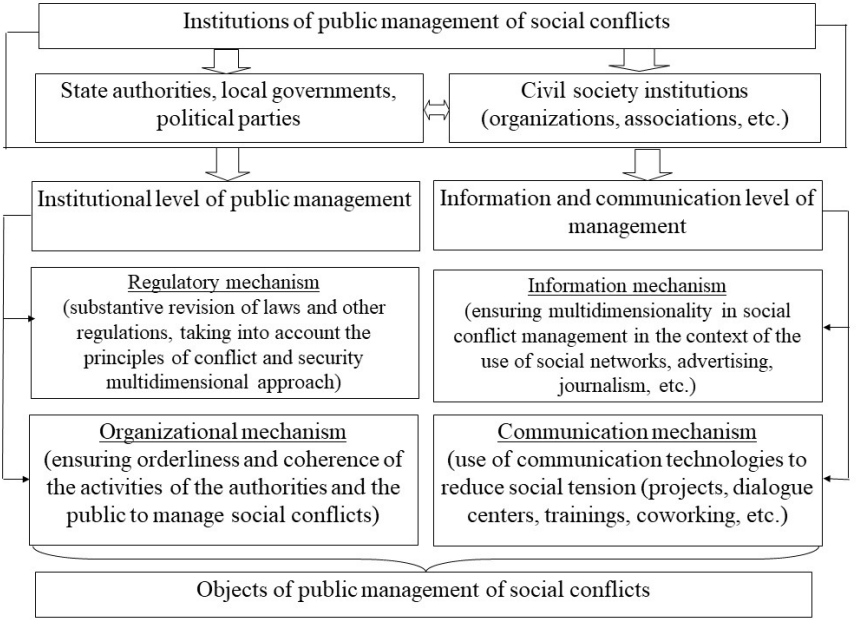

Fig. 5. Conceptualization of the results of institutionalization of public management of social conflicts.

Source: author's elaboration

For more effective prevention / resolution of social conflicts within the system of public management, we propose to use the method of assessing the readiness of institutions of public management of social conflicts for interaction (Table 2).

Table 2. Levels of assessment of readiness of institutions of public management of social conflicts for interaction

Diagnostic blocks	**Composition**	**Parameters**	**Assessment**		
Orientation of readiness	*Content of readiness*	*Indicators for assessment of readiness for interaction*	*Levels*		
			O	D	K
1	2	3	4	5	6
1. Theoretical readiness	1. Knowledge of the theoretical basis of social conflict management	1) knowledge of basic laws of social conflict management; 2) orientation in the purpose and tasks of social conflict management; 3) knowledge of terminology; 4) ability to select the content of communications on the basis of scientific data, facts, concepts, laws. 5) understanding the logic of the process of social conflict management.			
	2. Knowledge of effective communication methods	1) orientation in the diversity of modern methods of communication; 2) understanding the essence of these methods; 3) an idea of the possibilities of using existing methods of communication in the process of social conflict management.			
2. Methodological readiness	1. Knowledge of the content of social conflict management	1) understanding the role of interaction in the system of social conflict management; 2) orientation in strategies, programs, and projects; 3) allocation of knowledge, skills, and abilities that should be formed in the process of social conflict management.			
	2. Knowledge of modern achievements in the field of social conflict management	1) understanding the relationship between the content, forms, and methods of social conflict management; 2) orientation in the diversity and specificity of forms of organization of social conflict management; 3) orientation in innovative forms of organization of social conflict management, their essence, conditions of successful use in practical activity.			

	3. Knowledge of social conflict management tools	1) orientation in diversity, specificity, conditions of application of modern means in the process of interaction, aimed at social conflict management; 2) understanding the roe and functions of social conflict management in terms of activation and development of participants' interests in certain issues.			
3. Psychological readiness	1. Knowledge of the psychological characteristics of the participants of the interaction	1) orientation in the psychological characteristics of the participants of the interaction; 2) understanding the role of psychodiagnostics in achieving the effectiveness / efficiency of interaction; 3) orientation in diagnostic methods for assessing the psychological characteristics of participants in the interaction process.			
	2. Knowledge of the laws of interaction	1) understanding the laws of cognition; 2) orientation in the components of cognition, their essence and logical relationship. 3) understanding the psychological foundations of personality development of different age groups.			
	3. Knowledge of modern technologies of public administration interaction	1) understanding the need for coordination of interaction in the process of social conflict management; 2) mastery of techniques for planning, organizing and motivating interaction; 3) orientation in the content of control and analytical activities in the process of interaction.			

Source: author's elaboration

No doubt, the advantage of this method is that it allows assessing various aspects of readiness for the process of interaction in social conflict management; identify weaknesses, which allows offering a specific system of proposals to increase readiness for interaction in social conflict management. The technique can be used in full or in parts (individual blocks), and allows making additional blocks, components, or parameters.

Conclusions

Thus, the effectiveness of public management of social conflicts in the context of national security can be ensured by the appropriate level of interaction of public management institutions, to determine which it is proposed to use a method for assessing the readiness of the institutions of public management of social conflicts to interact, including specific parameters.

The results of the study can be used as a starting point to determine the level of the correlation in the system of public management, aimed at preventing / resolving social conflicts. Thus, public management policy makers can obtain information to assess the effectiveness of the interaction between the institutions of public management and civil society to prevent social conflicts in the context of national security.

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Tax administration in the context of effective public administration: the case Eastern European Countries

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Abstract

The research is devoted to the problem of improving tax administration in the context of effective public administration in the case of Eastern Europe. After analyzing scientific approaches to clarify the essence of tax administration in the public administration system, it is proposed as a component of tax administration in public administration, a systemic mechanism, whose elements implement the guidelines and priorities of the state program through complex organizational and administrative structures and procedures, for the formation of centralized and decentralized financial resources on the basis of the integrity, punctuality and efficiency of the tax obligation by subjects of tax relations. The complex factors of economic and geopolitical development are reflected in trends and analytical indicators to assess the effectiveness of tax administration (integrated indicator) through the prism of the normalized performance coefficients of its administration and the work of tax inspections. As a conclusion on the basis of the identified factors of subjective and objective influences, a set of measures has been proposed to improve tax administration in the context of public administration within the framework of remote cooperation.

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Keywords: public administration; tax administration; taxpayers; Eastern Europe; administrative efficiency.

La administración tributaria en el contexto de una administración pública eficaz: el caso de Europa del Este

Resumen

La investigación se dedica al problema de la mejora de la administración tributaria en el contexto de una administración pública eficaz en el caso de Europa del Este. Después de analizar los enfoques científicos para aclarar la esencia de la administración tributaria en el sistema de administración pública, se propone como un componente de administración tributaria en la administración pública, un mecanismo sistémico, cuyos elementos implementan las directrices y prioridades del programa estatal a través de estructuras y procedimientos organizativos y administrativos complejos, para la formación de recursos financieros centralizados y descentralizados sobre la base de la integridad, puntualidad y eficiencia de la obligación tributaria por sujetos de relaciones tributarias. Los factores complejos de desarrollo económico y geopolítico se reflejan en las tendencias y los indicadores analíticos para evaluar la eficacia de la administración tributaria (indicador integrado) a través del prisma de los coeficientes de desempeño normalizados de su administración y el trabajo de las inspecciones tributarias. Como conclusion sobre la base de los factores identificados de influencias subjetivas y objetivas, se ha propuesto un conjunto de medidas para mejorar la administración tributaria en el contexto de la administración pública en el marco de la cooperación a distancia.

Palabras clave: administración pública; administración tributaria; contribuyentes; Europa del este; eficacia administrativa.

Introduction

Sustainability of development and the crucial need to fulfill state functional responsibilities puts forward the need for constant financial support. Current trends in the world's economies development, due to pandemic operation conditions, have shown the complexity of the formation and mobilization of such financial resources. Generally accepted fact of the key role in financing state needs and ensuring the sustainability of their development is the revenue in the taxes forms and fees, necessitates the effective functioning of tax administration system, which is a means

of forming the bulk of state finances and opportunities for effective fiscal policy.

In such circumstances, ensuring sustainable economic development of the state, strengthening its position in the world economic space, the urgent issue is to provide budgets with tax revenues, while counteracting the risks of declining production, reducing tax base, migration of taxpayers to countries with more comfortable living conditions, deterioration of tax supervision and control results, and, as a consequence, reducing tax administration quality.

We believe that among possible mechanisms, methods, tools and levels of public administration, key role belongs to the tax. Their development, improvement measures and functional efficiency of application should form and implement a comprehensive program of country economic security, ensuring the appropriate business activity level, investment attractiveness and competitive conditions of economic entities. Such circumstances necessitate revision and improvement of tax administration procedures to modern economic challenges in the public administration system as a complex process and relations system on the mobilization of tax revenues in terms of completeness, timeliness, legality of taxpayers' tax obligations.

1. Literature Review

Establishing tax administration role and importance in the system of state public administration will be explored through the prism of understanding the essence of «public administration» and «tax administration». Scientific and theoretical digression of public administration determines a relatively new scientific research direction, the first attempts to explain which took place in the 90s of last century.

Aucoin (1990), Alexander (2010) argued that public administration should be considered from the perspective of operational and administrative aspects of the public bodies functioning, including civil service, public programs, and policies analysis, led by strategic planning, regulatory assessment actions, interactions of the state and citizens, including lobbying and business relations with state and municipal bodies.

This public administration understanding is a complex interaction of state, municipal, non-commercial and mixed subjects, the common goal of which is to meet social needs along with the full implementation of public policy and goals. Gonta, Shkarlet and Dubyna (2016) deepen the understanding of public administration statements essence on the need to consider the socio-economic interests of such management relations subjects (population, public funds and organizations, business entities).

Such relations are political in nature, combining the implementation principles of state activity various spheres (types of policies).

It is impossible to disagree with the views of Sander and Marce (2017), Helmuth and Gahvari (2000) that public government is inextricably linked with public administration as a set of measures and tools to achieve public goals and public interests on the platform of functioning government key branches (legislative, executive, and judicial).

Based on the presented views, one's own vision of public administration is revealed through a system of joint effective public activity (a set of objects led by public authorities) to ensure socio-economic development of society in the historical country genesis features and public administration functioning models.

Speaking about financial support of public administration, we share the position of Kosach, Holubchyk and Kurinska (2017) on the key role of tax revenues sources provided by tax administration in this process. At the same time, tax administration in terms of subjective composition and content is an important structural element of public administration, as it is endowed with the exceptional importance of public revenue generation process and determined by the need to create an effective management system (administration) of tax and fee mobilization.

Sander and Marce (2017) emphasize the participation of tax administration in the structure of public government through the tax administrators' activities as subjects of public administration at all territorial levels. Popelo *et al.,* (2021) determines the tax administration affiliation to public administration by the activities of tax administrators, aimed at the tax laws implementation and other legal acts of tax legislation. Also, it is difficult to disagree with Shaposhnykov and Holovko (2019), who defend the position of tax administration competence in providing specific administrative services in the field of tax relations.

The author's team believes that tax administration is a component of public administration, as well as a systemic mechanism, elements of which implement state program guidelines and priorities through complex organizational and managerial structures, regulations and procedures for the formation of centralized and decentralized financial resources on the basis of tax obligation completeness, timeliness and effectiveness provided by tax relations subjects.

The issue of measuring tax administration effectiveness in public administration was studied by Dabla-Norris *et al.,* (2019), Keen and Slemrod (2017) and Crandall (2021), whose judgments can be systematized in the following context. The analysis of tax administration effectiveness allows to establish, firstly, tax processes quality related to tax revenues in the structure of budget revenues at all levels, and secondly, quality of tax institutions checkup based on established criteria and indicators.

Modern society genesis requires a change in approaches to the interaction of public administration and business entities on the principle of «state for society». The need to ensure tax administration effectiveness should be the main task and vector of each state public administration to achieve established socio-economic goals of development. We believe that such position should be the basis for improving tax administration to achieve public administration goals and objectives.

2. Results

Effective public administration is determined by the effectiveness of its structural components. Particular importance is attached to achieving an increase in tax revenues against the background of high tax culture and tax liability of economic entities in the tax administration context at the state level. We defend the opinion that the efficiency of tax administration realizes the possibilities of economic processes public management, including by establishing a relationship between the payer's income and the amount of taxes paid by him, managing the level of tax burden and more.

We believe that the effectiveness of tax administration is determined by tax revenues growth against the background of minimizing the costs of their administration, tax culture level and tax liability. We will choose these criteria as a basis for studying the efficiency level of tax administration in the structure of public administration.

Methodology for determining the level of tax administration efficiency differs within the policy of each state, however, common in application is: the number of taxpayers, the dynamics and level of tax revenues relative to GDP, the status of tax arrears, the level of preferential taxation, etc. Using official statistics from the European Commission, IOTA, ISORA we will conduct a research of tax administration effectiveness in Eastern Europe by assessing the tax revenues dynamics (Table 1).

Analyzing data in table 1, we note that during 2016-2019 in the economic activities of all studied countries there were positive trends in the growth of tax revenues. The best growth rates in 2019 compared to 2018 were shown by Bulgaria (110.2%) and Romania (109.0%) against Hungary (106.1%).

Table 1. Rating of tax revenues dynamics of Eastern European countries in 2016-2020

Indicator	2016 year	2017 year	2018 year	2019 year	2020 year
Bulgaria	14 170,4	15 410,5	16 810,9	18 526,4	18 026

Czechia	62 290,9	68 790,1	75 967,8	80 900,6	79 450
Hungary	45 551,3	48 229,7	50 268,8	53 344,3	51 038
Poland	146 632,3	163 740,0	179 267,9	191 864,1	193 514
Romania	45 331,5	48 471,2	54 865,3	59 806,0	58 762
Slovakia	26 923,7	28 805,3	30 602,5	32 518,4	31 888,5

Source: compiled by the authors based on information of the Statistics Service of the European Union.

However, 2020 was a decline in business activity and the number of taxpayers, rising unemployment and government support costs amid pandemic economic conditions, which led to a decrease in tax revenues compared to 2019 in all countries (Bulgaria - 2.7%, Czech Republic and Romania - 1.8%, Hungary - 4.4%, Slovakia -2,0%), except Poland (increase of 101%). Net tax collection by tax administrations averages 20-30% of GDP.

Summarizing world experience of assessing tax administration effectiveness, we will analyze the indicators of tax administration (Table 1) and the effectiveness of tax control bodies selected for the studied countries (Table 2).

Table 2, data analysis showed that the studied countries are characterized by a positive trend not only in meeting tax revenues planned indicators, but also exceeding the planned ones. According to the results of 2020, the leader is Poland, whose planned indicator share was 105% against the background of difficult economic conditions. The lowest rates in 2020 were provided by Slovakia - 101.8%. The level of tax burden in Eastern Europe, measured by determining the share of tax revenues in the GDP structure, for the period under review is the highest in Hungary (38%), the lowest value is typical for Romania (25.8%). Thus, the estimated data provide an opportunity to assert the priority role of taxes and fees in the formation of national income and necessitates the development of measures to improve tax administration.

Table 2. Assessment of tax administration fiscal efficiency in Eastern Europe in 2016-2020

Indicator		2018 year	2019 year	2020 year
Bulgaria	tax rate	103,6	102,4	103,2
	tax burden ratio	30,0	30,3	29,7
	Δ tax debt	6,3	6,8	7,3
Czechia	tax rate	102,6	103,1	102,8
	tax burden ratio	36,0	35,9	36,9
	Δ tax debt	6,0	5,8	6,2
Hungary	tax rate	102,6	103,0	102,4
	tax burden ratio	39,2	38,0	36,9
	Δ tax debt	6,2	5,9	6,8
Poland	tax rate	106,9	103,3	105,3
	tax burden ratio	36,0	36,0	37,0
	Δ tax debt	6,5	6,4	7,0
Romania	tax rate	104,4	104,8	104,2
	tax burden ratio	26,8	26,8	26,9
	Δ tax debt	7,6	7,8	8,3
Slovakia	tax rate	102,6	103,2	101,8
	tax burden ratio	34,2	34,6	34,6
	Δ tax debt	9,0	8,8	9,2

Source: compiled by the authors.

Thus, the estimated data provide an opportunity to assert the priority role of taxes and fees in the national income formation and necessitates the development of measures to improve tax administration. Assessing the tax debt rate of these countries, there are ambiguous trends, which are to reduce its amounts in 2019 (mostly -0.3% Hungary) compared to 2018 (except Bulgaria) and subsequent growth in 2020. The quarantine conditions for business entities in the reporting year led to worsening the ability of taxpayers to meet tax obligations.

Analyzing the data in table 3, the results of tax administrations are ambiguous. In terms of administrative staff efficiency in all countries, their growth was noted - the volume of mobilized taxes per employee increased against the background of declining taxpayers (mostly in the Czech Republic

- 0.21% and Slovakia - 0.15%). And although the declared growth rates are insignificant, but in monetary terms, actual tax revenues are significant. In terms of optimizing operating costs in the studied period, there was an increase in the workload level on administrative staff.

Table 3. Indicator analysis for assessing the effectiveness of Eastern Europe tax administrations in 2018-2020

Indicator		2018 year	2019 year	2020 year
Bulgaria	employees performance	2,13	2,35	2,42
	staff workload	0,52	0,53	0,55
	change rate in the number of payers	1,08	1,14	1,03
Czechia	employees performance	4,88	5,31	5,53
	staff workload	0,48	0,51	0,56
	change rate in the number of payers	5,71	4,24	2,56
Hungary	employees performance	3,55	3,90	4,01
	staff workload	0,48	0,50	0,54
	change rate in the number of payers	1,03	1,01	0,7
Poland	employees performance	3,90	4,12	4,20
	staff workload	0,79	0,77	0,80
	change rate in the number of payers	1,05	1,01	1,02
Romania	employees performance	2,67	3,03	3,12
	staff workload	0,06	0,06	0,06
	change rate in the number of payers	2,3	3,0	3,4
Slovakia	employees performance	5,32	5,81	5,96
	staff workload	0,25	0,28	0,31
	change rate in the number of payers	4,8	6,1	5,4

Source: compiled by the authors

Summarizing the data in table 2 and 3, an integrated assessment of tax administration effectiveness in Eastern Europe, according to the system of declared indicators normalized values, is determined:

$$I_m = \sum_{i=1}^{k} w_i I_m^i \ , \tag{1}$$

where l_m - integrated assessment of tax administration effectiveness,

w_i – indicators share of the i-th group in assessing tax administration effectiveness.

The abstract value of integrated indicator should approach 100% (or 1) as a maximum level of administrative efficiency on the way to ensuring 100% implementation level of the planned indicators of tax revenues mobilization to the country's budgets at all levels. Digital calculated data are shown in Fig. 1.

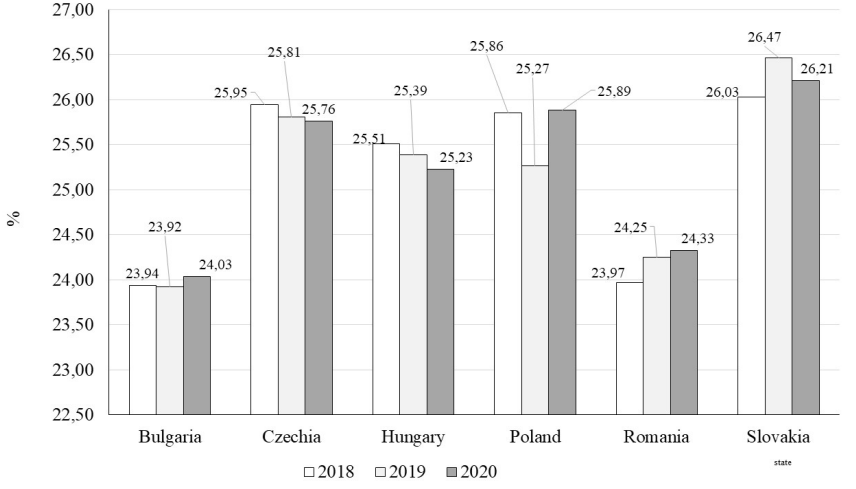

Fig. 1. Integrated indicator dynamics of tax administration efficiency in Eastern Europe

Source: compiled by the authors based on information of the Statistics Service of the European Union.

Presented in fig. 1 data give grounds to claim that the efficiency level of studied countries tax administration is low. In particular, analyzed indicator determines the tax revenues amount, which is provided by changing the efficiency of tax administration. As a result, summarizing the indicators of 2018-2020 in Eastern Europe, it was found that only Bulgaria and Romania managed to increase the efficiency of tax administration.

Pandemic, climate, demographic and technological changes in the world, on the one hand, and close ties with people and business, large-scale experience of tax administrations staff around the world, analytical resources and data exchange, on the other hand, in 2020 set a new level of tax administration policy, delegating to tax administrations new responsibilities in the tax relations field, different from the classic ones. New environment has led to, and continues to require, wider introduction of digital services and tax administration tools (new online channels, platforms for taxpayer registration and VAT payment by digital services, IT systems integration and data exchange with public administration sectors) to ensure financial sustainability of public administration in financial deficit conditions.

In our opinion, the complexity of today's global challenges must be overcome not only at the national but also at the global level. At the same time, effective tax administration should be based on the principles of tax certainty and tax awareness, increasing employment, reducing tax inequalities among businesses, motivating compliance with tax laws, stimulating investment and dealing with externalities and risks.

We believe that the key vectors for improving tax administration efficiency in Eastern Europe should be:

Further costs reduce associated with processing a huge amount of tax information and data, tax returns, refunds, notifications, applications, processing bank payments, and also reduce costs of the payment provided by taxpayers through digitalization. A possible tool and corresponding innovation may be the function of taxpayers' access to review their information, declaration or payment obligations, including artificial intelligence and methods of processing hyper data sets.

Improving methods, estimation models and instant budget VAT reimbursement and refund of overpaid taxes and fees, especially for legal entities and individuals taxes, in conditions of constant lack of economic entities financial resources (VAT, personal taxation, income taxation, and tourism payments).

Creating an environment of voluntary tax compliance through a wide range of effective and easy to use channels of communication with taxpayers, in particular, with a higher personalization degree for individuals and self-service opportunities 24/7.

Strengthening and timeliness of tax debt collection through expanded analytical research, improving strategies for taxpayers financial recovery, tax debt prevention, increasing the level of international cooperation in minimizing it.

As part of improving tax administration of cross-border activities, tax administrations should require digital platforms to collect information on

income, received by taxpayers, transport and personal services, and report information to tax authorities (compliance with tax obligations, providing a consistent basis for business assistance and reporting information to tax authorities). Also, according to the successful experience of Spain, it is advisable to introduce tax residency electronic certificates, which will create opportunities for processing paper forms of documents from other countries, which are approved by physical signature and seal.

Increasing costs provided by tax administrations in the latest digital tools to increase efficiency by enhancing self-service, reducing the use of time-consuming channels (chatbots, mobile applications, virtual tax agents) and, in the future, the usage of cloud technologies for 3rd generation platforms calculations (technologies, tools, ancillary processes, frameworks and management, hosting services in the public cloud infrastructure).

Wider implementation and use of biometric information authentication, unique to taxpayer, in order to strengthen the protection of their personal information, as a result of introduction of single digital taxpayers' numbers register.

Strengthening customs, combating smuggling and illegal product groups movement between countries. Improving the quality of tax crimes investigations (money laundering, corruption, terrorism, that may threaten strategic, political and economic public administration) by combating and improving transparency, cooperation between government agencies, access to international cooperation.

Minimization of tax disputes on the basis of constant increase of business entities tax culture level.

We argue that effective tax administration, as an element of public administration, and a high level of tax certainty for all tax relations subjects will promote economic growth, encourage investment and increase the level of competitiveness of Eastern European countries in general.

Conclusion

The effectiveness of public administration requires improving the quality of tax administration, as a structural element and a means of national budgets priority funding, directly determining the status of socio-economic development. After analyzing tax administration conditions in Eastern Europe, its low level of efficiency was identified, as well as key reserves for increasing budget revenues (reducing debt, strengthening fight against tax offenses, improving tools and technologies of tax administration).

The scientific and practical value of the study is determined by the author's interpretation of tax administration concept in the context of public administration, key principles of effective tax administration, as well as outlined ways to improve the quality of its implementation in the dominant conditions of remote and customer-oriented service based on information and digitalization software elements. Proposed measures should have a positive impact on the tax administration results in countries, optimize costs of its implementation, as well as increase the level of taxpayer's personal responsibility and strengthen its tax culture in the process of fulfilling tax obligations.

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Status obligations of a "flag state": counteraction to unauthorized broadcasting from the high seas

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Abstract

The investigation analyzes the status obligations of a "flag state" that are related to the suppression of the illegal use of "flag ships". The purpose is to investigate the modern international legal regime of the suppression of an unauthorized transmission from the high seas and, at the same time, to prepare the doctrinal foundations for defining the complete complex of "flag State" obligations. In this regard, the subject is the international conventions that constitute the regime for the suppression of unauthorized broadcasting, which is carried out by ships on the high seas, adopted at one time by international organizations the League of Nations and the United Nations. The methodology consists of systematic and formal-legal methods, as well as methods of analysis and synthesis. The conclusions stress that States should take all appropriate measures with a view to achieving the results of the erasure. It should therefore be noted that these provisions are dedicated, inter alia, to "flag vessels" and "flag States".

Keywords: flag state; maritime law; flag vessel; offshore; unauthorized transmission.

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Obligaciones de estatus de un "Estado del pabellón": supresión de una transmisión no autorizada desde alta mar

Resumen

En la investigación se analiza las obligaciones de estatus de un "Estado de bandera" que están relacionadas con la supresión del uso ilegal de los "buques de bandera". El propósito es investigar el régimen legal internacional moderno de la supresión de una transmisión no autorizada desde alta mar y, al mismo tiempo, preparar los fundamentos doctrinales para definir el complejo completo de las obligaciones del "Estado del pabellón". En este sentido, el tema son las convenciones internacionales que constituyen el régimen de supresión de la radiodifusión no autorizada, que se lleva a cabo por barcos en alta mar, adoptado en un momento por organizaciones internacionales, en particular, la Liga de las Naciones y las Naciones Unidas. La metodología consta de los métodos sistemático y formal-legal, así como métodos de análisis y síntesis. Las conclusiones destacan que los Estados deben adoptar todas las medidas apropiadas con miras a lograr los resultados de la supresión. Por lo tanto, se debe señalar que estas disposiciones están dedicadas, entre otras cosas, a los "buques de pabellón" y a los "Estados del pabellón".

Palabras clave: estado del pabellón; derecho marítimo; buque de bandera; alta mar; transmisión no autorizada.

Introduction

The UN Convention on the Law of the Sea of 1982 prescribes that vessel have the nationality of the State whose flag they are entitled to fly and that there must exist "a genuine link" between a "flag State" (a State which entitles a vessel to fly its flag) and the "flag vessels" (the vessels which are entitled to fly the States' flag). But the Convention has neither definition of the term "genuine link" as a legal link "legal rights – legal obligations", nor defines the full complex of a State's and of the vessels' rights and obligations.

The first beginnings of British pirate radio appeared in 1960. The Dutch station Veronica was then broadcasting in English from Dutch territorial waters. To do this, within the radio station there was a separate British division called CNBC. Veronica's English-language broadcasts never gained wide popularity due to significant signal and distance problems between Dutch waters and the British coast. Veronica stopped broadcasting in English, as the radio was doing well in Holland, and the management wanted to free up time for advertising. Veronica took the first step: broadcast illegally from the ship and broadcast rock. Thus, began the radio revolution.

It is generally accepted worldwide that the unauthorized broadcasting from high seas (hereinafter referred to as "UBHS") pose a serious adversely affect the economic, cultural and political foundations of society.

The suppression of "UBHS" is based on the rules of international law which, inter alia, are prescribed by conventions, agreements and declarations of the United Nations and Council of Europe. Provisions of abovementioned international documents form the modern international legal regime of the suppression of "UBHS". Thus, it will be natural to analyze the core international conventions which are related to the matter. So, the purpose of our study is to analyze the legal norms and legal rules, which are related to the regulation of contemporary problems of the suppression of "UBHS", namely definitions, legal characteristics and legal methods of suppression, prospects of application and the implementation of treaties, international measures and procedures adopted to its review or monitor.

Many scholars have classified the suppression of "UBHS" as an intervention in (withdrawal from) the principle of the "freedom of navigation in the high seas", that means the intervention in the exclusive jurisdiction of a "flag State" which it exercises over the "flag vessels" in the high seas – ocean spaces which are situated beyond the national sovereignty of any State (Kolodkin et al., 1984; Parkinson, 1991). But our proposition is to classify this suppression as the straggle against the illegal use of the "flag vessels" and the obligations of the suppression of "UBHS" as the status obligations of a "flag State", which forms an integral part of the "genuine link" conception.

1. Theoretical Framework or Literature Review

There are real preconditions for the active development of socio-dangerous phenomenon in contemporary world. Guattari (1984) points out that "the lines of escape combine with the objective lines of "de-territorialization of the system" to create an irrepressible "aspiration for new areas of freedom". One example of such an escape line is the "free radio stations". Technological development, and in particular the miniaturization of transmitters and the fact that they can be put together by amateurs, "encounters" a collective aspiration for some new means of expression. There are some researches, in which they have investigated the regulation of "radio piracy" in the USA (Bender, 1988; White, 2011; Misiroglu, 2015), in Britain (Chapman, 1992) and Meers (2021) declare that "while there are almost no Belgian pirate radio stations left today", history shows that despite the odds, a new wave of clandestine radios can conquer the air any time.

Additionally, Arend (2009) notes: "When I teach the law of the sea, we always spend some time discussing the heinous crimes that are prohibited on the high seas. Some of them are quite familiar – piracy, slave trade, narcotics trafficking. But there is one outlawed activity that is normally not so familiar to the students – pirate broadcast". Robertson (1982) proposed the application of international legal concepts in order to bring pirate radio stations under state control.

The provision of the "UNCLOS'82", which prescribes that all States shall cooperate in the suppression of "an unauthorized broadcasting from the high seas" (hereinafter referred to as "UBHS") "have become a new in international law of the sea" (Balobanov et al., 1986) and the legal international problems related to the suppression of "UBHS" were investigated by Kovalev (2003), Byers (2004), Kolodkin (Kolodkin et al., 2007), Peters (2014); Dubner and Arias (Dubner & Arias., 2017), Ong and Shatat (Ong et al., 2021); Proelß (2021), Williams (2021), Kuznietsov (2020) and many others. Nevertheless, certain marine scientists have not paid due attention to the matter (Kolodkin et al., 1984; Blishchenko, 1988; Parkinson, 1991; Shchipzov, 1995; Shemiyakin, 2002; Skaridov, 2006).

Further, Antzelevich (2013) have researched international legal problems of modern merchant shipping and have not found among them the problem of suppression of "UBHS".

Pavlova, Polunina, Tkalych, Mankovskyi, and Zubair (2020) studied the problems of the obligations of states in the context of environmental security of the oceans, which can also be attributed to the «genuine link» conception. Thus, we see the possibility and importance of studying the modern international legal regime of suppression of "UBHS" as the suppression of illegal use of the "flag vessels" and the obligations of suppression as the status obligations of a "flag State".

2. Methodology

The methodology used are systematic and formal-legal methods, as well as methods of analyses and synthesis.

We applied the system method to show the place of the norms of certain international conventions, as well as multilateral and bilateral, in the modern international legal regime of the counteraction to the "UBHS". In this sense, we have considered that "UBHS" is an illegal use of the "flag vessels" and there are the status obligations of a "flag State", inter alia, to suppress the abovementioned using of ships, which are the obligations to form an integral part of the "genuine link" conception. Thus, the purpose of our study was to investigate modern international legal regime of the suppression of "UBHS".

It was advisable to start considering from the studying of the groundwork laid by the United Nations and the Council of Europe in the matter of this article. We handled a formal legal method to demonstrate the content of the conventions with were adopted under the aegis of these international organizations. The study confirmed that eradication of "UBHS" is a collective responsibility of all States and that, to that end, coordinated action within the framework of international co-operation is necessary.

Thus, the "UBHS" is an international criminal activity, the suppression of which demands urgent attention and the highest priority, what, in its turn, demands to improve international co-operation. Related initiatives in the suppression of "UBHS" started to take form of multilateral international agreements comparatively not so long ago, but the true effectiveness of the treaties can be assessed by the extent to which the States Parties to these treaties apply its provisions at the national level. The research method used in this research is using normative legal research methods and it can be concluded that the regulations regarding the suppression of "UBHS" is contained, inter alia, in Part VII. "High seas" Article 109 of the "UNCLOS'82".

Methods of analysis and synthesis are used to generalize and draw conclusions about results of the study. Every State is free to use the high seas but is not allowed to take illegal actions or violate the law, both national law and international law, which in its application are often violated by countries in the world. In particular, the implementation of international treaties, which "generally refers to both the national measures adopted by States and international measures and procedures adopted to review or monitor those national actions" (Weissbrodt & DottridgE, 2002).

3. Results and Discussion

- **Preliminary notes**

Related anti-slavery initiatives started to take form of the international agreements comparatively long ago. But, although slavery has existed since ancient times the 1815 For the purposes of this article, we will understand the term "obligation" – as a legal duty and the term "status" – as a person's legal standing or capacity – the term, which derives from Roman law, in which "it referred to a person's freedom, citizenship, and family rights" (Martin, 1994).

The term "high seas" means "all parts of the sea that are not included in the territorial sea or in the internal waters of a State" (United Nations, 1958. Article 1) and "No State may validity purport to subject any hart of the high seas to its sovereignty" ("UNCLOS'81". Part VII. Article 89. "Invalidity of claims of sovereignty over the high seas").

A "flag State" means "a State which entitles a vessel to fly its flag" or "a State hose flag a ship flies or entitled to fly" and the "flag vessels" means "the vessels which are entitled to fly the States' flag and "ship" means any self-propelled sea-going vessel used in international seaborne trade for transport of goods, passengers, or both" (United Nations, 1986).

Article 2. "Definitions"); and "there must exist "a genuine link" between the State and the ship" ("UNCLOS'82". Part VII "High seas". Article 91. "Nationality of ships").

- **The UN Convention on the Law of the Sea, 1982**

Each state that has ratified "UNCLOS'82" receives certain subjective rights, legal obligations, and responsibilities and, consequently, legal status as a "participating state". It should be noted that "UNCLOS'82" should not change the content of the rights and obligations of the participating countries contained in other documents.

Article 109, Part VII, UNCLOS'82, stipulates that the states of the world must cooperate in order to suppress unauthorized broadcasting from the high seas. The term "unauthorized broadcasting" means broadcasting to a wide audience, contrary to international rules, from a ship or from an installation on the high seas, other than distress signals.

Anyone who engages in unauthorized broadcasting may be arrested and prosecuted; any vessel conducting unauthorized broadcasting may be arrested; any broadcasting device engaged in unauthorized broadcasting may be confiscated. But the above measures can be applied only by the state:

1) Which has jurisdiction.

2) On the high seas, and;

3) in accordance with Article 110 of the Convention.

The states that have jurisdiction to take the above measures are the flag state of the ship; the state of registration of the installation; the state of which the person is a citizen; any State where a broadcast signal may be received; or any State where permitted radio communications are subject to interference.

Article 110 of UNCLOS'82 provides that warships with appropriate jurisdiction that encounter a foreign vessel engaged in unauthorized broadcasting have the right to detain such a vessel if such a vessel does not have international immunity.

The "UNCLOS'82" is "the first general multilateral international agreement (the agreement of universal kind)", which has the provisions related to the struggle against the "UBHS"; "namely the "UNCLOS'82"

brings most important contribution" in the struggle against the unauthorized broadcasting (Kolodkin et al., 2007). Before the adoption of the "UNCLOS'82" even the "UNCHS'1958" had no provisions, which were dedicated to the matter (see: "UNCHS'1958". Article 22).

It must be noted that certain researchers declared that the crimes, which are committed in the high seas and connected with the "UBHS", "are not so numerous and have not vital menace to the states' safety at sea" (Romashev, 2001, p. 53), but the states, which citizens received the unauthorized radiotransmissions, classify them as menace to their national interests. Usually, the states understand that the actions mentioned above could make obstacles to the accepted distribution of the frequencies, as well as could, inter alia, lead to uncontrolled use of radiofrequencies, which are dedicated to sending of distress signals.

- **International Radio Regulations**

Radio Regulations was adopted by the International Telecommunication Union (hereinafter referred to as the "ITU") on the International Radio Conference in 1947. "Radio Regulations" means the Radio Regulations annexed to, or regarded as being annexed to, the most recent International Telecommunication Convention which is in force at any time ("SOLAS". CHAPTER IV. "Radiocommunications". Part A. "GENERAL". Regulation 2. "Terms and definitions", paragraph 1.11).

There are three core sectors developed in the "ITU": Radiocommunication Sector, Telecommunication Standardization Sector and Telecommunication Development Sector (Convention of the International Telecommunication Union. Chapter I. "Functioning of the Union". Sections 5, 6, 7). For the purpose of the above instruments of the "ITU", the following terms shall have the meanings defined below: "mobile service" - radiocommunication service between mobile and land stations, or between mobile stations; "radiocommunication" - telecommunication by means of radio waves (where the term "radiocommunication" also includes telecommunications using electromagnetic waves, propagated in space without artificial guide and where "radio waves" are electromagnetic waves, propagated in space without artificial guide (ANNEX. "Definition of Certain Terms Used in this Convention and the Administrative Regulations of the International Telecommunication Union").

- **The European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories of 1965**

The European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories of 1965 (hereinafter referred to as the "UAPPS'1965") and usually referred to as "Prevention of Pirate Stations", was adopted in Strasburg 22.01.1965 under the aegis of the European Economic Council.

The member States of the Council of Europe have adopted the "UAPPS'1965", considering that the Radio Regulations annexed to the International Telecommunication Convention prohibit the establishment and use of broadcasting stations on board ships, aircraft or any other floating or airborne objects outside national territories and also the desirability of providing for the possibility of preventing the establishment and use of broadcasting stations on objects affixed to or supported by the bed of the sea outside national territories.

The "UAPPS'1965" is concerned with stations which "transmit broadcasts intended for reception or capable of being received, wholly or in part, within the territory of any Contracting Party, or which cause harmful interference to any radio-communication service operating under the authority of a Contracting Party in accordance with the Radio Regulations".

Conclusions

The results found highlight that an unauthorized broadcasting from high seas is an illegal use of the "flag vessels" and there are the status obligations of a "flag State", inter alia, to suppress the abovementioned using of ships, which are the obligations to form an integral part of the "genuine link" conception.

The modern international legal regime of the suppression of an unauthorized broadcasting engaged in by vessels on the high seas is constructed by the norms of certain international conventions, which was adopted under the aegis of the United Nations and the League of Europe, as well as of other international agreements, multilateral and bilateral; in this sense the purpose of our study was to investigate some of these documents.

The study shows that with the documents, which was investigated, concrete rules and articles were dedicated upon with the purpose to the suppression of an unauthorized broadcasting from high seas engaged in by vessels on the high seas. Moreover, all appropriate measures with a view to achieve the results of the suppression are to be taken by all States. So, we want to note that these provisions are dedicated, inter alia, to the "flag vessels" and, thus to the "flag States".

It must be noted that certain researchers declared that the crimes, which are committed in the high seas and connected with the "UBHS", "are not so numerous and have not vital menace to the states' safety at sea" (Romashev, 2001, p. 53), but the states, which citizens received the unauthorized radiotransmissions, classify them as menace to their national interests. Usually, the states understand that the actions mentioned above could make obstacles to the accepted distribution of the frequencies, as well

as could, inter alia, lead to uncontrolled use of radiofrequencies, which are dedicated to sending of distress signals.

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Organizational and Economic Mechanism of the Ukrainian State Policy in the Tourism and Hospitality Sector: State and Innovative Prospects

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Abstract

This study is due to the existing contradiction between the current socio-economic, institutional, and other transformations that are taking place in Ukraine, and on the state of state policy implementation mechanisms in the tourism sector. Solving these problematic issues requires new approaches to the strategy formation in this area. The research is based on conceptual, methodical, project, institutional and historical-legal approaches, as well as a set of methods that ensure their implementation, in particular: logical generalization, factor analysis, synthesis and abstraction. In order to actively involve the existing tourism resources in the state and ensure the effective functioning of its tourism sector, it is necessary to develop a scientifically based system of programmatic and strategic measures based on common methodological principles and cover the main directions of state policy in the tourism development. In Ukraine, these areas are defined in the Tourism and Resorts Development Strategy for the period up to 2026. This strategy does not take into account the new intensions in ensuring the tourism sector development due to a number of factors, actualized recently and related to the emergence and spread of viral and other diseases and the like.

Keywords: public policy; organizational and economic mechanism; tourism; hospitality; social tourism.

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Mecanismo organizativo y económico de la política estatal de ucrania en el sector turístico y hospitalario: estado y perspectivas innovadoras

Resumen

Este estudio se debe a la contradicción existente entre las actuales transformaciones socioeconómicas e institucionales que están teniendo lugar en Ucrania y sobre el estado de los mecanismos de implementación de políticas estatales en el sector turístico. Resolver estas cuestiones problemáticas requiere nuevos enfoques para la formación de estrategias en esta área. La investigación se basa en enfoques conceptuales, metódicos, proyectuales, institucionales e histórico-legales, así como en un conjunto de métodos que aseguran su implementación, en particular: generalización lógica, análisis factorial, síntesis y abstracción. Para involucrar activamente los recursos turísticos existentes en el estado y asegurar el funcionamiento efectivo de su sector turístico, es necesario desarrollar un sistema con base científica de medidas programáticas y estratégicas basadas en principios metodológicos comunes y cubrir las principales direcciones de la política estatal en el desarrollo turístico. Se concluye que, en Ucrania, estas áreas están definidas en la Estrategia de desarrollo de turismo y centros turísticos para el período hasta 2026. Esta estrategia no tiene en cuenta las nuevas intenciones para garantizar el desarrollo del sector turístico debido a una serie de factores, actualizados recientemente y relacionados con la aparición y propagación de enfermedades virales y de otro tipo y similares.

Palabras clave: política pública; mecanismo organizativo y económico; turismo; hostelería; turismo social.

Introduction

On 2 June 2021 the Cabinet of Ministers published a resolution (Cabinet of Ministers Resolution, 2021) according to which, quarantine restrictions in Ukraine are eased: amendments were made to the government decree establishing quarantine and imposing restrictive anti-epidemic measures in order to prevent the spread of COVID-19. In particular, as reported by the State Agency for Tourism Development of Ukraine (SATD) , the list of documents with which it is allowed to cross the border of Ukraine to enter during the quarantine and avoid self-isolation was expanded. Since 16 June 2021 the all of Ukraine has moved to a «green zone» (SATD: 2021-6-16).

Now, taking into account changes adopted by the government, foreign citizens and stateless persons (including holders of residence permits in Ukraine) for entry into Ukraine, besides the policy (certificates), which

covers expenses for treatment with COVID-19 and is valid for the entire period of stay in Ukraine, must have or a negative result of testing for COVID-19 by polymerase chain reaction or express test for SARS-CoV-2 coronavirus antigen, made not more than 72 hours before crossing the state border, or a certificate confirming the receipt of a complete COVID-19 vaccination course with vaccines included in the WHO list of vaccines permitted for use in emergency situations, issued in English or with an English translation. Of course, the quarantine is still in force, but even such easing causes noticeable optimism in Ukrainian tourists and tour operators, given the losses incurred by the tourism industry because of the quarantine.

As we know, 96% of the tourist destinations were affected by the pandemic; according to various sources, in 2020 there was a 58-78% drop in international tourist revenues compared to the previous year; the number of international trips in the world was reduced by 85% compared to 2019 and by 65% compared to 2020. The financial consequences of the COVID-19 coronavirus pandemic have also been catastrophic. Along with tourism and transportation, agriculture, mining, and other industry sectors were affected. The economic crisis caused problems in the financial sector: risks of credit default increased, pressure on the insurance market intensified, and panic in the commodity and value markets (Nusratullin *et al.,* 2021). However, even minor easing of the quarantine regime helps to improve the situation. In particular, for the first half of 2021 the amount of tourist tax to local budgets of Ukraine was 69 453.4 thousand UAH.

For comparison: at the same time of previous years these amounts were 57 914.7 thousand UAH. (2019) and 68,564.4.9 thousand UAH. (2020) (SATD: 2021-7-13). According to the UNWTO Travel Barometer, international mobility increased by 12% in May of this year (SATD: 2021-7-23). Under such conditions, there is a clear need to rethink public tourism and hospitality policies to mitigate the Covid-19 effects. However, recent studies on public tourism policies at the global level and comparative public policies for alternative solutions in post-pandemic scenarios show that the place and space occupied by public tourism policies in major tourism magazines are scarce and are not considered as a tool to manage the sector; there is a lack of clarity at the methodology level and a shortage of public policy proposals that were implemented in crisis situations (Apaza-Panca *et al*., 2020).

1. Objectives

That is why *the aim* of the work is a scientific-theoretical justification and development of practical recommendations to improve the effectiveness of the organizational and economic mechanism of the Ukrainian state policy of tourism in the context of overcoming the Covid-19 effects.

2. Methods

The methodological basis of the work is a set of scientific cognition methods and general scientific research principles, based on the fundamental provisions and works of scientists on the state regulation of the tourist sphere and public administration. The study is built on the conceptual, methodological, design, institutional and historical-legal approaches, as well as a set of methods ensuring their implementation, in particular: logical generalization, factor analysis, synthesis and abstraction (to study tourism and hospitality as an object of public administration and to reveal the content of public policy mechanisms of this sphere); theorizing and historical formalization (to determine the components of a comprehensive mechanism of state tourism policy, as well as the genesis of its mechanisms formation in Ukraine); grouping, modeling and forecasting (to substantiate scientific foundations and approaches to the development of the organizational and economic mechanism of state tourism policy in Ukraine). Informational and factual basis of the study are laws of Ukraine, decrees of the President of Ukraine, regulations of the Cabinet of Ministers of Ukraine, analytical materials of the Ministry of Culture and Information Policy of Ukraine, statistical information of the State Statistics Service of Ukraine and the State Agency for Tourism Development and the like.

3. Results and discussion

3.1. Organizational and economic tools in the State Tourism Policy of Ukraine

Our state is characterized by specific features of the tourist potential. These include the absence of any significant spatial gaps between the territories with this potential, recreational orientation of the latter, the natural resources availability, allowing to engage in tourism of different complexity, as well as the proportion of historical and cultural monuments, recognized by the world heritage of UNESCO, and the like. The tourism sector is one of the most promising for the socio-economic development of countries (and under certain conditions can be on a par with the IT sector). It provides for a balanced use of natural and historical and cultural recreational resources, as well as significant profits by the subjects of the tourist market and state institutions from entrepreneurial activity, cultural traditions preservation, etc. Taking this into account, the further tourism development trends are connected with the increase of investments, balanced state support, standardization and the like.

Directions of tourist sphere development are determined by the factors of both exogenous and endogenous nature, formed under the influence

of the requirements of time and society. Determination of these factors gives reason to argue that the public policy implementation should take into account the tendency development of environmental, social, medical, therapeutic-recreational, and other tourist markets and e-tourism (e-tourism). In this context, the elements of the tourism public policy system require justification, such as: subjects and objects of public administration, its principles, functions, means and tools.

Tourism public policy system is set in motion by appropriate mechanisms, implemented by a number of state actors, among which are identified state and non-state institutions. The term «mechanism» is commonly interpreted as a system of measures and tools that determine the sequence of performing any type of activity. The mechanism of tourism and hospitality management, therefore, should be understood as a set of legal, organizational, economic, technological, socio-psychological, and other production means of tourist services with their inherent forms and methods of influence, which are subordinate to the realization of set goals.

In general, in the scientific literature, discussions are mainly around the definition of public administration mechanisms in this sphere; in particular, it refers to the organizational and economic, economic, managerial, environmental and economic, financial, organizational and managerial, legal, organizational, and others. However, the fragmentation and inconsistency in the approaches of scientists about the categorical apparatus in the state regulation sphere (Bliznyuk, 2018) still remains a serious problem.

The determining place among the applied tools of influence (legal, institutional, economic, informational, analytical, communicative, resource, etc.) takes, in our opinion, the organizational toolkit, because it provides the complexity of formation and implementation of all functioning elements of tourism public policy system, establishing and supporting forward and backward connections between internal and external environment. These tools form the basis of those state policy mechanisms of tourist sphere, - organizational and legal, organizational and institutional , organizational and economic, - which should be qualified as the defining mechanisms.

At the same time, their combinatorial functioning leads to the allocation of a complex state policy mechanism of the tourist sphere. In its framework are defined as means of tourist public policy of the leisure tourism sphere, as well as the means of influence.The first group of state policy means in the mentioned sphere includes: tourist activity licensing; permissive activity on tourist support; certification and standardization in the tourist activity sphere; determination of tourist infrastructure objects categorization, etc. To the second (means of state influence) include: control of activities in the field of tourism; establishment of responsibility for violation of legislation of Ukraine in the tourism sector and the like.

The Law of Ukraine « About Tourism» enshrines the most important legal provisions concerning the place and role of tourism in the state, the principles of state regulation of tourism, the main objectives, priority areas and ways (means) of implementing state policy in the tourism sector (Law of Ukraine, 1995: Art. 6-12). Among the organizational and legal means of state policy in the tourism sector in Ukraine there are two groups. To the first (means of permissive nature) include: licensing of tourist activity; permits for tourist support; certification and standardization in the tourism activity sphere; categorization of tourist infrastructure facilities. To the second (means of an influential nature) include: control of activities in the tourism sector; responsibility for violations of Ukrainian legislation on tourism. The mentioned organizational and legal means of tourism state policy can also be considered as means of legal support for tourism applied by executive authorities, the purpose of which is to develop and implement legal norms aimed at increasing guarantees and efficiency of protection of rights and legitimate interests of consumers of tourist product, solving issues related to satisfaction of travellers' interests (tourists) and development efficiency of the whole tourist sphere as a whole (Leonenko, 2019).

The first group of organizational and legal means of regulation in the tourism sector can be complemented by state registration of business entities in the tourism sector. The main organizational and legal means to ensure entrepreneurship in the tourism sector of Ukraine are state registration of business entities, licensing, standardization, certification, state control, bringing violators to administrative responsibility. And although in general Ukrainian society is set on the development of democratic foundations, decentralization of power, implementation of the European public administration model, etc., but still have to state the unbalanced structure of state regulation of tourism, its inefficiency and inconsistency with modern challenges, causes:

> ... chaotic decisions that negatively affect the development of domestic tourism: cancellation of licensing of travel agency activities, delay in improving the provisions of the Law of Ukraine «About Tourism», the presence of significant regulatory barriers regarding the carrying out of tourism activities, the lack of state policy to support priority inbound and domestic tourism, as well as the lack of a mechanism for the enforcement of legislative acts in the tourism field and control by state authorities over their implementation (Opanasiuk and Ohrimenko, 2018: 17).

Taking into account the imperfect functioning of the organizational and legal mechanism of the state policy of Ukraine, we consider it appropriate to emphasize the following directions to improve its means: 1) to license not the type of enterprise (tour operator and travel agent), but the type of entrepreneurial activity in tourism; 2) to increase the importance of

standardization as one of the means of tourism public policy by developing common standards for the tourist product; 3) to introduce an alternative system of the cancelled mandatory certification of tourist services; 4) to solve a number of problematic issues of state control in the tourism sector and others. It should be noted that some progress has already been scheduled, in particular the draft law on amendments to the Law of Ukraine «On Tourism» and some other legislative acts on the basic principles of tourism development (Draft Law, 2020), submitted to the Parliament of Ukraine.

But according to the Conclusion of the Committee on Ukraine's Integration into the European Union of 14.04.2021. (Ib), this Draft Law requires substantial revision, in particular with regard to the provisions of the Directive 2015/2302/EU and some other remarks. As for the public discussion of the Draft, the State Agency for Tourism Development of Ukraine together with the Tourism Subcommittee of the Committee on Humanitarian and Information Policy during the 7 months since the publication of the Draft collected suggestions and the public and published the collected amendments received through the online form in the comparative table posted on the official DART website (SATD: 2021-05-07). So the discussion continues.

The organizational-institutional mechanism of tourism and hospitality management is also among the determinants, because through this subsystem the main managerial decisions determining the level of industry development are implemented and the state policy is formed (Blizniuk, 2019). In the historical context to the independence of Ukraine, the state policy of the tourism sphere was carried out by the Main Department for Foreign Tourism under the Council of Ministers of the USSR and was marked by excessive ideological orientation. During the formation of Ukraine's independence, a number of measures, in particular, the State Committee on Tourism (CMU Decree, 1993). The processes of transition to a market economy were complex and took place in the context of the collapse of the USSR and the formation of the independent state of Ukraine. One of the most important events of this period can be considered the adoption and enactment in 1995. The Law of Ukraine «On Tourism» (Law of Ukraine, 1995), which, in particular the first time was provided for licensing of tourist activity.

The improvement of the legislation on tourism began, but it was largely a change in the organizational structure of the state apparatus - the central executive authority dealing with tourism also had an unfavorable impact on its development. Thus, in 2001 was established the State Department of Tourism under the Ministry of Ukraine for Family, Youth and Sports (CMU Resolution, 2001) in 2005 the State Service of Tourism and Resorts under the Ministry of Culture and Tourism (CMU Resolution, 2006) in

2011. - State Agency of Ukraine for Tourism and Resorts under the Ministry of Infrastructure of Ukraine (Decree of the President of Ukraine, 2011) in 2016 - Department of Tourism and Resorts under the Ministry of Economic Development and Trade of Ukraine (Order of MEDT, 2016).

On December 4, 2019 the State Agency for Tourism Development of Ukraine became the central body of executive power, which implements the state policy in the sphere of tourism, the activity of which is directed and coordinated by the Cabinet of Ministers of Ukraine. On December 24, 2019 the Cabinet of Ministers of Ukraine approved a resolution on the activities of the DART (CMU Resolution, 2019), which also regulates its powers and scope of competence. In particular, this document defines the status of hotels, catering establishments and resort facilities as objects of tourist infrastructure (Regulation, 2019). At the end of 2020 the Regulation on the State Agency for Tourism Development of Ukraine made important additions (CMU Resolution, 2020) concerning the sphere of hospitality:

> DART in accordance with the tasks entrusted to it ... develops and submits in the prescribed manner to the Minister of Culture and Information Policy proposals on ... regulations on the commission for establishing categories for hotels and other facilities designed to provide temporary accommodation (accommodation) services, and regulations on the appeals commission; the form of the certificate of establishment of a hotel or other facility designed to provide temporary accommodation (accommodation) services, the appropriate category (Regulations, 2019: 56).

Of course, these formulations do not provide the proper clarity of the organizational-institutional mechanism of the state policy of Ukraine regarding the sphere of hospitality, but brings some clarity about its place in the tourism sphere.

There are several state influence models on the tourism sphere in the world practice, and one cannot speak about universality or at least optimality. But it should be noted that the state influence on the tourism sector in Ukraine has a number of things in common with the world models: the definition of tourism as an important sector of the economy, the formation and implementation of state policy in this area, the regulation of relations in tourism at the legislative level, the existence of a central executive body dealing with tourism, the application of certain legal means of ensuring the tourism sector. The main task for Ukraine in the issue of the effectiveness of organizational and institutional provision of tourism development at the local level is to solve the problems of overlapping responsibilities of the central and local executive authorities, as well as local state administrations and local governments (Bliznyuk, 2019). This should take into account the decentralization reform of power in Ukraine.

In addition to the already mentioned basic state policy mechanisms of Ukraine in the tourism and hospitality - organizational and legal and organizational and institutional - to the basic refers the organizational and economic mechanism, because «... tourism is part of the economic system; it plays an important role in the economy through the multiplier effect (promotion of other economic activity)» (Trebicka, 2016: 17) and refers to the factors that determine the rate of economic growth in the country (Mazaraki *et al.*, 2019). Ukraine has proclaimed tourism as one of the priority areas of economic and cultural development (Law of Ukraine, 1995: Art. 6). In this way, the content of the state's activities to regulate tourism is legally defined.

Therefore, the definition of organizational and economic mechanism indicators of state policy of Ukrainian tourism sector, based on the new conceptual foundations of economic and social forecasting, allow to form the development directions of the Ukrainian national tourist system and the regional tourism industry. In contrast to existing, developed organizational methods and indicators to improve the effectiveness of the regional tourism industry, make it possible to establish the main ways of implementation of the tourist product to ensure the most rational options for effective activities of inbound and domestic tourism.

In particular, A. Okhrimenko (Okhrimenko, 2017), studying the Ukrainian national tourist system (NTS) as an economic system, notes that this image is a prerequisite for the formation of strategic vectors of development. Determining the transformational factors that affect the NTS and fundamentally change the scale, components and proportions between external and internal aspects of its development, the researcher proves that the mentioned processes objectively stimulate the national tourist system modernization and application of innovative management methods. In particular, we are talking about such strategic vectors of transformational shifts in the NTS, as security of tourists and investors, regulatory framework of NTS development, development of infrastructure and human resources, marketing policy of NTS promotion, environmental and cultural policy - their implementation is able to improve the efficiency and competitiveness of NTS and the national economy (Okhrimenko, 2017).

It is obvious that improving the indicators system of organizational and economic mechanism of the state policy of Ukrainian tourism sphere will contribute to optimization of the national tourist system as a whole, rationalization of the use of existing regional tourist resources of Ukraine, assessment the impact of management decisions made on the regional tourism industry development and speedy overcoming the pandemic Covid-19 in the tourism and hospitality industry.

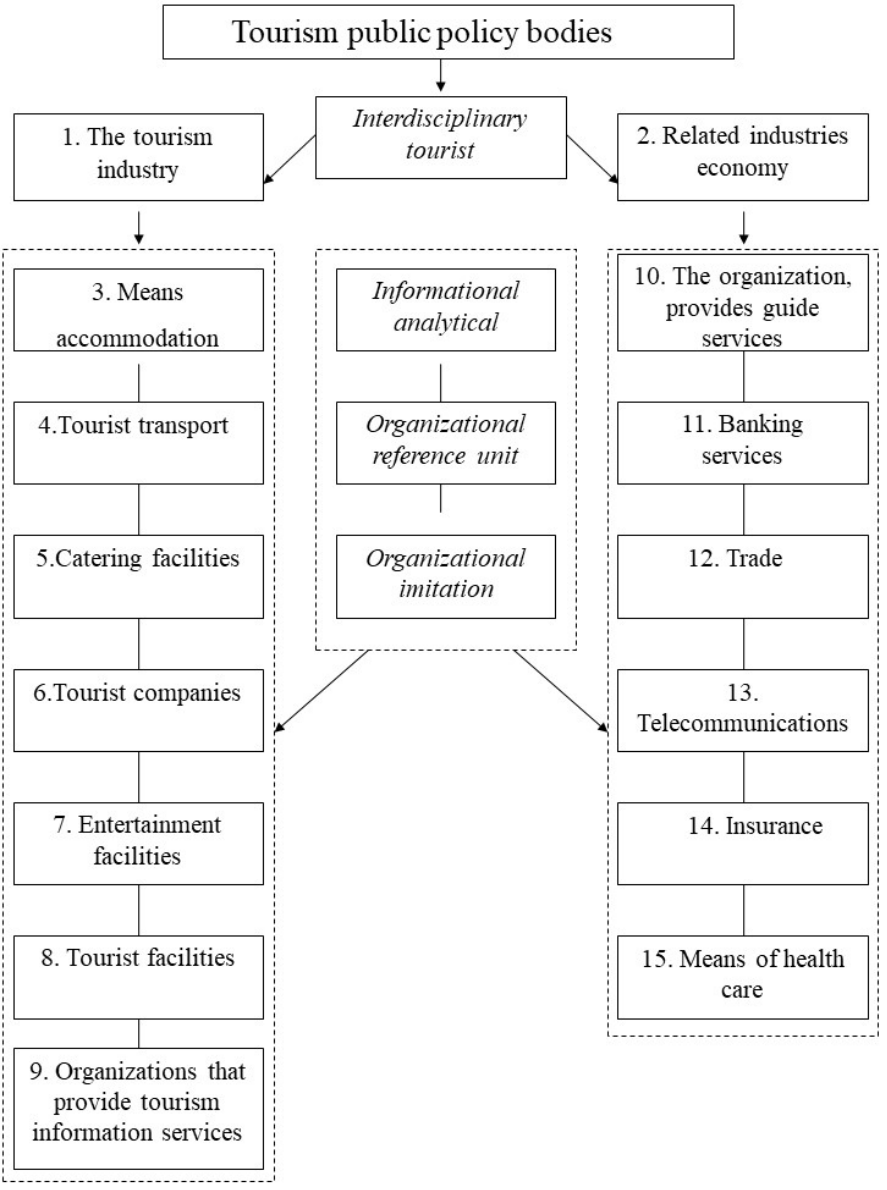

Fig. 1. Scheme of formation of the organizational-economic mechanism of the state policy of tourist sphere

(Own creation).

3.2.Innovative perspectives of the organizational and economic mechanism of public policy: the social aspect

Despite the change in the management functions' priorities in the tourism sphere towards activation of the public component and providing a set of tourist services, it is advisable to highlight the key models of public tourism policy, in particular socially-oriented tourism. Social tourism is traveling and recreation for socially vulnerable groups of population in order to restore their performance, physical and moral strength. It is fully or partially carried out at the expense of budgetary funds, state extrabudgetary funds (in particular, funds allocated under the State Social Assistance), as well as employers' funds. That is why any type of tourism (cognitive, resort, ecological, rural, etc.), which expenses are fully or partially paid from financial sources intended for social needs, can be considered social (Krapivina *et al.*, 2018).

It is based on three basic principles: providing rest and recreation for each member of society by attracting people with low incomes to tourism environment; subsidizing tourism trips of low-income citizens; participation of state and public structures in tourism development. The Manila Declaration on World Tourism (1980) points out that social tourism is a goal to which society should aspire for the benefit of less wealthy citizens. But despite the universality of recognition, wide dissemination and already quite a long history, about the unity in understanding of the social tourism nature and organizational and economic mechanisms of its implementation is still not said, which explains the variability of goals, objectives and tasks under the influence of variable social challenges.

To summarize, in the historical context we can talk about the development of the idea from the desire to attract to the tourist practices «... poor or disadvantaged elements of society» (Hunzike, 1957: 53) to engaging tourism in a social practice system aimed at ensuring greater justice, tolerance, and life satisfaction for all people (Haulot, 1982). The Montreal Declaration «Towards a Humane and Social Vision of Tourism» (1996) notes that social tourism should ensure the availability of tourist recreation for all, including families, young people and the elderly. Additionally, it is worth noting the moral nature of social tourism (Minnaert *et al.*, 2007).

The special importance of the social tourism development is not for the first time - the need for its support from the state has been repeatedly emphasized, based on the provisions of the Constitution of Ukraine about the social state, whose policy is aimed at creating conditions that provide a dignified life for the people and ensure free personal development, as well as considering the general trends of European social policy - rejection of rational and pragmatic thinking and appeal to the «mass» person (Bortnikov *et al.,* 2021b).

The central notion of the new approach to social structure has become social integration, the goal of which is to create a «society for all,» in which each individual, with his rights and responsibilities, plays an active role. The gradual increase in attention to the individual's interests as an object of national policy in various spheres culminated in the adoption of the UN Copenhagen Declaration on Social Development (1995), which proclaimed the care for people as the main condition for sustainable development, one of the most important goals of European social policy (Oleksenko *et al.*, 2017). Therefore, tourism, primarily domestic tourism, should be accessible to all segments of the population.

The adoption of a special legislative act on social tourism, which should create real guarantees for people (primarily vulnerable segments of the population) to realize their right to tourism (Opanasiuk and Ohrimenko, 2018) can help to establish the social tourism priority. Moreover, in the current conditions characterized by the economic system imbalance, new risks have also emerged: the objective impossibility of implementing state support for the tourist infrastructure functioning, as well as the decrease in demand (due to the population' real income reduction) (Zakharin, 2019).

Unfortunately, we have to admit that the legal status of social tourism in Ukraine has not yet been defined. But the leveling of social tourism as a factor in the development of Ukrainian society causes many negative social consequences. First of all, it is about the growth of social tension in the society, because the growth of incomes of the population «does not keep up» not only with the growth of tourism services, but also with the growth of other components of the standard of living of the population. As a consequence, people's need for recreation is the least satisfied as the main range of social needs. Potential clients of social forms of tourism are about 80% of the population, which, however, practices amateur ways of recreation (Krapivina *et al.*, 2018).

According to a survey of the demand for tourist products of different social and age groups in Ukraine, as well as the sentiment of the tourist dynamics in Ukraine, conducted by DART, the most popular type of recreation among Ukrainians is the beach (29.8%) (SATD: 2021-05-31). Meanwhile, dissatisfaction with the need for recreation deepens, if not causes, other problems: the preservation and prevention of health, vitality, healthy leisure, satisfaction of educational and cultural needs and the like.

Therefore, to coordinate the efforts to form a holistic and systemic tourism policy in the conditions of socialization of the economy, it is necessary to develop a social doctrine of tourism (Suppression *et al.*, 2020) The process of developing such a doctrine should involve a detailed scientific analysis of the socio-economic situation, objective assessment of previous experience in all areas of social life, study of external and internal factors influencing the course of social processes, analysis and borrowing

of leading trends in world development with their subsequent adaptation (Suppression *et al.,* 2020)

Note that the Law of Ukraine «On Tourism» does not even mention social tourism. Only in the Strategy for Development of Tourism and Resorts 2008 the task is «... To develop a mechanism of state support for the introduction of social tourist product» (Strategy, 2008). In the Strategy for the Development of Tourism and Resorts for the period up to 2026 (Strategy, 2017) in the section of strategic planning for the development of types of tourism based on their clear classification and prioritization at the state and regional level, social tourism is not mentioned again. However, the section of the Strategy «Development of tourism infrastructure» refers to «... ensuring the accessibility of tourist infrastructure facilities for persons with disabilities and other immobile population groups» (Strategy, 2017).

Given the goals for 2020-2022, defined by the Ministry of Social Policy, can solve tourism, these are: creating a favorable environment for people with disabilities; ensuring the protection of children's rights and support for families with children; social support for families in difficult circumstances and other categories of people; creating conditions for decent old age citizens (Order MSPU, 2020) and others.

The priority directions of social tourism development in Ukraine should include first of all health-improving and medical tourism as the most socially significant. The proper functioning of health and medical tourism depends on a number of external and internal factors, namely globalization; the level of socio-economic development of Ukraine; its image in the international arena, the investment climate, as well as the state of digitalization, bureaucratization and corruption of public policy and the like.

In order to reduce the negative impact of these factors it is recommended to establish a rule in the Law of Ukraine « About Tourism « (Law of Ukraine, 1995) norm about the implementation of strategic planning (medium and long-term), as well as the actualization of measures to ensure the development of health and medical tourism. Among the undeniable advantages of these tourism types are defined as follows:

- The social importance and relevance of medical and health tourism in the modern industrial relations system.
- The active development of the medical and health tourism sphere in the great majority of countries in the world due to the recent increase in the occurrence and spread of viral diseases.
- Availability of infrastructure facilities, especially in the medical and health tourism sphere, have a long history and their own established brand.

- Availability of highly qualified personnel in the social welfare, health care services, non-traditional medicine and balneology, which can be involved in the implementation of medical and therapeutic and recreational tours.
- Availability of training and production and scientific and practical base for the development of practice-oriented bases of recreation and medical tourism.
- Use the achievements of the digital economy to improve the efficiency and service quality in the implementation of health and medical tours
- Additional opportunity to develop exports of medical and health tourism to European countries and the like.
- In order to reduce the negative impact on the domestic tourism market it is necessary to focus on such promising areas of joint institutional activities in the field of tourism promotion in Ukraine and the CIS countries in terms of macro-level public policy:
- Improvement and unification of regulatory and legal support for the tourism functioning;
- Holding major joint international events aimed at promoting and popularizing tourism.
- Joint development of service exports and the statistical recording and analysis system of tourist flows.
- Promotion of interregional tourism projects in the Ukrainian border area, using the resource base and tourist infrastructure, in particular in health and medical areas;
- The possibility to obtain unified entry electronic visas for citizens of other states to visit the tourism facilities.

Meanwhile, certain subsidies for recuperation of children, rehabilitation of the military, persons with special social needs, etc. still remain more the exception than the rule. (Felenchak 2019: 120). Therefore, the successful functioning of the organizational and economic mechanism of the state policy of the tourist sphere of Ukraine should provide for improvement of the efficiency of functioning of organizations of medical and therapeutic and health tourism, i.e. the micro level of the tourist market.

On this basis, there is an obvious need for appropriate public policy, which should take into account current global trends, as well as opportunities for digitalization and the introduction of innovative technologies (DART 2021-05-24). In addition, there is a need to improve domestic legislation, taking into account the provisions of the CIS modular legislation in the

field of tourism. This is intended to ensure the formation of a unified legal framework for the process of organization and management of the sphere of tourism.

One of the most promising forms of ensuring sustainable competitive advantages in the sphere of medical and therapeutic and health tourism is the use of opportunities for formation of cluster structures in order to strengthen the market position of relevant services while increasing the share of an economic entity in various segments of consumers.

As defined by Michael Porter, a classical economic theorist, «...clusters are geographically concentrated groups of interrelated companies, specialized suppliers, service providers, firms in related industries, and related organizations (such as universities, standards agencies, and trade associations) in certain fields, competing with one another, but conducting joint activities (Porter 1993: 256). Cluster formation occurs naturally, but the process of accelerating its development requires a deliberate effort. Namely, the launch and development of a cluster initiative. Despite the fact that the cluster as a whole is not only a spatial formation, the territorial component proper in this case in terms of tourism development priority is the most important (Suppression *et al*., 2020)

A tourism cluster is an integrated structure uniting a number of territorially and/or functionally interrelated organizations whose activities are aimed at design, provision, promotion and quality control of health and medical services in the tourist market based on efforts coordination for effective use of resource potential and consideration of permanent consumer demand monitoring. The main purpose of the cluster is to increase the effectiveness of services in the medical and health tourism on the basis of achieving a synergistic effect from the conduct of joint commercial activities.Therefore, the essence of the cluster approach as a relatively new management technology is that it allows increasing the competitiveness of a particular region and/or industry (Oleksenko *et al*., 2021; Rybalchenko *et al*., 2021).

That is, by applying the cluster approach, we increase the efficiency of functioning and competitiveness of regional enterprises (because the cluster is geographically limited) by coordinating and uniting efforts (including promotion of a predetermined joint product, in our case tourist product) not only the direct product producers, but also the auxiliary enterprises indirectly connected with the final product production of the cluster. In addition, there is also an increase in the enterprise efficiency through the introduction of innovative approaches and new, knowledge-intensive technologies (Yavorsky, 2015).

It is worth mentioning that in the mass consciousness of Ukrainians there is a widespread belief that the state should allocate funds for

the development of social tourism.This is probably an echo of social consciousness of the previous era, when all kinds of tourism had a social character. This desire to shift social tourism financing entirely on the shoulders of the state is erroneous. And it is not just a question of having or not having funds in the budget, but of «... such budget expenditures are almost unnecessary» (Kolotukha 2009: 126).

All over the world it is self-financing, and also considerably replenishes the state treasury: mass social tourism outweighs its cheapness by the total inflow and quick turnover of living money, increases employment, investments in tourism directly on the spot, and at the same time tax revenues (Kolotukha, 2009). The world experience of social tourism organization shows a variety of financial support (loans with low interest rates, subsidies, tax benefits, etc.), active social organizations participation (charity organizations, pension funds, trade unions, etc.), the use of social advances that raise the living standards and health service standards. On the other hand, tour operators are interested in a flexible discount system for people with low incomes. Low cost makes recreation available to the general public, and this significantly increases demand, brings income to tourism enterprises and allows to sell at a discount trips that did not find a buyer for the full price.

In most countries of the world direct financing by the state of social tourism is not provided. Let us remind that the Hague Declaration on Tourism (1989) states that the State cannot spend on tourism more than it expects to receive from it. But the sources of funding and material support for social tourism, except for budgetary funds, may be the funds received as a result of tourist and other activities of social tourism institutions, payments in the form of social tourist rents, voluntary contributions of legal and physical persons, including foreign ones to support social tourism.

However, Ukraine has not developed a regulatory document that would define a mechanism for obtaining social payments from the budgetary funds for social needs from the state authorities under the law. There is also no specific definition of who of the tourists, for which of their travels, where and when can receive financial support from the state for these purposes. Thus, the central problem of social tourism is to find its funding sources, and if there are any such available, the bona fide financial distribution system among low-income categories of persons who, according to one or another criteria, are preferentially entitled to benefits in it (Krapivina *et al.*, 2018).

Therefore, it is obvious that the priority for Ukraine and socially-oriented domestic tourism needs support from the state. It is appropriate to emphasize that the latest realities of the global tourism space related to the quarantine measures caused by COVID-19 became a serious reason and no less serious opportunity «... to put your own house in order, turning your

eyes to internal problems, to make attempts to restore social, economic and psychological stability» (Bortnikov *et al.,* 2021a: 613), stimulating renewed efforts to develop domestic tourism in Ukraine, as evidenced in particular by the appearance of numerous regional tourism development strategies. Tourism priorities have also changed: according to DART, the survey results of tourist products demand of different social and age groups in Ukraine, as well as the mood of the tourist dynamics in Ukraine showed that more than half of the respondents (53.1%) are planning to spend the current vacation in Ukraine, and only every tenth - to go abroad.

Now the legislators together with DART are working on amendments to the Law « About tourism « in the second reading, which will be a new impetus for the development of the industry. In particular, this will contribute to the introduction of transparent rules for the operation of tourism entities and unified consolidated statistics (SATD: 2021-05-31).

Conclusions

The state influence on the tourism sphere in Ukraine has a number of common with the world regulation of this sphere, such as: the tourism definition as an important branch of the economy; relations regulation in the tourism sphere at the legislative level; the existence of the central executive body dealing with tourism; application of legal, organizational, informational and other means of providing the tourism sphere. At the same time, the extent of their use abroad and in Ukraine is different, and hence the results of the development of the tourist sphere.

Improving the effectiveness in the implementation of the organizational and economic mechanism of the Ukrainian tourism state policy involves taking into account the requirements of the time, in particular the ubiquity implementation of digitalization and innovative technologies. In this context, the need for the e-tourism development in Ukraine, which specific implementation features are recommended to enshrine in the current legislation about tourism.

In addition, considering the needs of society due to the wide spread of viral and other diseases, substantiated the importance of the cluster structures development, aimed at providing high-quality services in the field of medical, therapeutic and other socially-oriented tourism in Ukraine. Given this prescribed improvement of the Tourism and Resorts Development Strategy in Ukraine (for the period up to 2026) by updating the priorities and public policy measures, should provide for the active implementation of tourism clusters as appropriate organizational and economic tools.

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Regulatory policy in the context of effective public governance: evidence of Eastern European Countries

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Abstract

The purpose of the article is to study the regulatory policy of Eastern Europe in the context of effective public administration and to identify areas for ensuring its effectiveness in modern development conditions. The need for conceptual substantiation of the regulatory policy implementation directions, development of appropriate applied nature recommendations taking into account public administration system transformational processes has caused urgency of a theme. The methods of comparative analysis, statistical analysis, method of abstraction and formalization, grouping method, SWOT-analysis method were used as empirical research methods. It was substantiated that modern science considers this concept in the following aspects: complex, special, normative and globalization. In the context of the Good Government concept, regulatory policy was analyzed according to the transparency

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criterion. It was determined that the disadvantage for Ukraine is the lack of regulatory policy transparency, the lack of single database with draft regulatory acts and performance monitoring reports. It is proposed to use SWOT-analysis as a strategic tool for regulatory impact analysis. Conceptual bases of improvement of regulatory policy realization process have been developed in the following directions: economic development, improvement of internal business environment, harmonization of normative-legal regulation system, stimulation of partnership in the regulatory policy field.

Keywords: regulatory policy; regulatory influence; public administration; good governance; state regulation.

Política regulatoria en el contexto de una administración pública eficaz: la experiencia de Europa del Este

Resumen

El propósito del artículo es estudiar la política regulatoria de Europa del Este en el contexto de una administración pública eficaz e identificar áreas para garantizar su eficacia en las condiciones modernas de desarrollo. Los métodos de análisis comparativo, análisis estadístico, método de abstracción y formalización, método de agrupación, método de análisis DAFO se utilizaron como métodos de investigación empírica. Se fundamenta que la ciencia moderna considera este concepto en los siguientes aspectos: complejo, especial, normativo y de globalización. En el contexto del concepto de Buen Gobierno, se analizó la política regulatoria según el criterio de transparencia. Se determinó que la desventaja para Ucrania es la falta de transparencia de la política regulatoria, la falta de una base de datos única con proyectos de leyes regulatorias e informes de seguimiento del desempeño. Se propone utilizar el análisis DAFO como herramienta estratégica para el análisis del impacto regulatorio. Se concluye que, las bases conceptuales de la mejora del proceso de realización de la política regulatoria se han desarrollado en las siguientes direcciones: desarrollo económico, mejora del entorno comercial interno, armonización del sistema de regulación normativo-legal, estimulación de la asociación en el campo de la política regulatoria.

Palabras clave: política regulatoria; influencia regulatoria; administración pública; buen gobierno; regulación gubernamental.

Introduction

An important role in the economic system of any country belongs to the state, because among its main functions is the regulation of economic processes in general and economic activity of business entities in particular. The financial, budgetary and monetary security of the state depends on the correctly chosen state economic policy. At the present stage of world economic system development, new requirements are formed for the efficiency of public authorities, which involves the transformation of state administration into modern regulative models of the society development, the most common of which is public administration. Accordingly, the formation of an effective regulatory policy is an extremely important step in the implementation of public administration functions, the importance of which is growing in the leading countries of the world and, in particular, the European Community.

This means that the state as a whole and public authorities make transparent goals and strategies of their reform programs, which contributes the quality control improvement for both a result of regulatory policy and the responsibility of the structures involved to citizens, businesses and government. The regulatory policy effectiveness, in turn, affects the level of public confidence in public institutions. Transformational shifts in the economy caused by internal and external factors, turbulence of the external environment necessitate further improvement of regulatory policy.

Its transparency, clarity and adequacy to modern requirements is the key to the implementation of the effective public administration principles in the EU and countries that have chosen the priority of European integration. Such countries include Ukraine, whose economic situation is characterized by instability, and regulatory policy has not become an effective tool for accelerating the development of the national economy. Thus, the purpose of the proposed research is to study the regulatory policy of Eastern Europe in the context of effective public administration and to identify areas for ensuring its effectiveness in modern development conditions.

1. Literature Review

The study of theoretical foundations of regulatory policy, promising areas of its practical implementation, approaches to assessing its effectiveness is in the focus of many leading scientists since the middle of the twentieth century. Thus, McConnell and Brew (1993) have considered the importance of regulatory policy in the context of defining the public authorities' functions, which are the basis for analyzing their contribution to the state economic development. Important for the formation of regulatory policy

principles at one time were the studies of Stiglitz (1998), which were based on the position that the principles of any economic policy of the government can not be unified due to different experience of governance, economic and political traditions, and conditions.

Within the framework of this concept, there is a need to shift the emphasis of economic policy from the private sector to the public, to pay more attention not to quantitative but to qualitative aspects of state intervention in market mechanisms.

The institutional approach underlies the consideration of regulatory policy by Lagodiienko and Yakushko (2021), noting that: "Regulatory policy - the systematic development and application of national tools and institutions in order to form methods of state use of its regulatory powers" (2021: 380).

In a market economy, as noted by some authors, such as Arefieva *et al.* (2021), Derhaliuk *et al.* (2021), priority is given to the study of regulatory policy impact on the quality of public administration and local government in the economic activity field. Popelo (2017) has considered regulatory policy as an effective institutional tool for influencing socio-economic development.

Ayres and Braithwaite (1992) have emphasized adaptive regulatory policy in order to submit with the structure of the industry. Effective regulation must also meet the diverse goals of regulated firms, and the government must be tailored to the different motives of regulated entities. On the other hand, researchers believed that regulation should respond to industries behavior.

Büthe and Mattli (2011) have explored the features of the regulatory policy system, identifying the leading role of the following powerful global private regulators: the International Accounting Standards Board, which develops financial reporting rules, the International Organization for Standardization, and the International Electrotechnical Commission, which account for 85 percent of all international product standards.

The authors conducted a detailed empirical analysis of such regulation, based on surveys of many countries and industries, proved the crucial importance of internal institutions for the effective implementation of regulatory policy. Researchers have also noted that the regulatory role of the state is undergoing significant changes in the world economy key areas under the influence of globalization processes.

Samilenko H. has used a comprehensive approach in the study of the regulatory policy principles, which considers the essential characteristics of regulatory policy from the standpoint of public administration, legal and economic points of view.

Some researchers, such as Abramova *et al.* (2021) and others, have considered regulatory policy from the standpoint of dynamic development, which takes place based on predictability, planning and stability and interaction of public and private interests. According to the principle of dynamism, the requirements for regulatory policy today are the ability to adapt and qualitatively develop its structural components in the context of macroeconomic and foreign economic challenges.

In the context of dynamic development, regulatory policy has also been studied by Eisner, Worsham, Evan and Franchesca Nestor (2018), using primarily an analytical approach and examining the administrative status and dynamics of policy change.

In a specific, namely financial aspect, Alexander (2010) has considered the essence of regulatory policy, examining the effectiveness and suitability of fiscal regulation in the context of the impact on the regulatory policy goals achievement. Other studies of this scholar in the regulatory policy field examine the impact on its formation by the globalization of financial markets, especially in connection with the growing number of banking and financial crises and the current credit crisis, which threatened the global financial system stability.

A narrow approach to regulatory policy consideration has also been found in Gechert, Horn and Paetz (2018) works. In their studies, the authors also pay attention to financial measures, especially the long-term impact of austerity measures on the potential growth of goods and services production.

Consideration of regulatory policy, according to Holovko (2019), is based on the system of state regulation and small business management. The authors note that the main prerequisites for the formation of the system of small business state regulation on the example of Ukraine as a country with a transforming economy are: «improving the legal framework to facilitate the development of small business; providing a system of benefits for small business; development of business environment infrastructure; expansion of small and large business cooperation; state support for the development of factoring and leasing activities; providing financial and credit and also investment support to the business sector; management and information support.

Dubyna M. has also studied the state regulatory policy in the narrow sense of the impact on the business environment formation and development.

The role of regulatory policy in the process of business transformations has been studied by Gonta and Dubyna (2016). According to his interpretation, this is a direction of public policy, which involves improving the legal regulation of relations between business entities, as well as administrative relations between regulatory authorities and other authorities and also small businesses.

Thus, on the basis of research generalization on the phenomenon of "regulatory policy", it should be noted that modern science considers this concept in the following aspects:

- Complex aspect - regulatory policy is considered as a component of state economic policy.
- Special aspect - regulatory policy is the public authority's activity direction in the field of support, assistance, and regulation of business development.
- Normative aspect - regulatory policy is a tool for improving economic and administrative relations in the business sphere.
- Globalization aspect – regulatory policy is seen as an object to change under the influence of economic globalization.

Thus, the phenomenon of "regulatory policy" is a specific type of relationship between public administration system and economic entities, which functions on the basis of feedback – it is expedient to consider separately both the state policy to society and the economic entities policy to the state in the form of the interaction effect.

2. Methodology and Methods

The theoretical and methodological basis of the study was formed by the scientific works of leading scientists on this topic. Using the method of analysis and generalization, the essence of regulatory policy and the analyzed features of its development on the example of individual countries have been characterized. It has also allowed to identify the main problems and formulate vectors for the implementation of the studied countries regulatory policy, taking into account the experience of other developed countries.

The method of comparative analysis has been used to compare approaches to determining the regulatory policy nature; statistical analysis - to study the regulatory policy status of the studied countries and trends in its development; method of system analysis, method of abstraction and formalization - for development of regulatory policy conceptual bases; SWOT-analysis method - to identify regulatory policy weaknesses and strengths of countries and promising areas for improvement. The usage of grouping method has allowed to improve the typology of approaches to the regulatory policy definition.

3. Results

Regulatory policy reforms reflect the global trend of public administration transformational processes in the modern society life, increasing the role of public administration in the economic activity sphere. The matter of regulatory policy contains tasks, directions and methods of economic activity state regulation, state management of these activities, its control and adjustment. In the post-Soviet countries and most of Eastern Europe, the process of forming new public authority institutions and regulatory policy mechanisms is accompanied by profound economic and political transformations complicated by the COVID-19 pandemic economic consequences.

According to modern scientific research, effective public administration is considered in the context of identifying the determinants of social development due to the partnerships formation between social institutions. In particular, S. Pollitt and G. Bouckaert (2004) in the study «Public Management Reform: A Comparative Analysis», emphasize the concept change from state to public administration and emphasize the importance of expanding public administration, state power liberalization, establishing participatory, partnership interaction between government structures at all levels of government, which will contribute to its effectiveness.

Recent trends in public administration development in EU countries indicate that the improvement of existing system of public administration regulatory policy is carried out according to Good Governance concept. The most common interpretation defines Good Governance as «the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law».

According to this concept, citizens participation in the decision-making process, both directly and through civil society organizations, is a priority, and the implementation of administrative functions by public authorities ensures the involvement of all stakeholders. Considering the regulatory policy in the direction of promoting entrepreneurship, it is appropriate to conclude that the system of public administration is accountable to society and focused on the formation of partnerships with business.

In 2017, European Commission developed a document «Better Regulation Guidelines», according to which» better regulation («Better Regulation») is understood as actions aimed at developing such EU policies and laws, which would achieve their goals at minimal cost.

«Better regulation» covers the entire policy cycle – policy development and preparation, adoption; implementation, application (including compliance), evaluation and review. At the same time, each stage of the

policy cycle corresponds to a number of principles, objectives, tools and procedures related to planning, impact assessment, stakeholder consultation, implementation and performance evaluation.

To study the regulatory policy specifics, we take the countries of Eastern Europe, such as the Czech Republic, Hungary, Poland, Latvia, Lithuania and Estonia. What they have in common is post-socialist development, the beginning of market reforms after the USSR collapse and the simultaneous accession to the European Community (2004). Despite the differences in approaches to regulatory policy, the current regulatory policy system of these countries looks as follows:

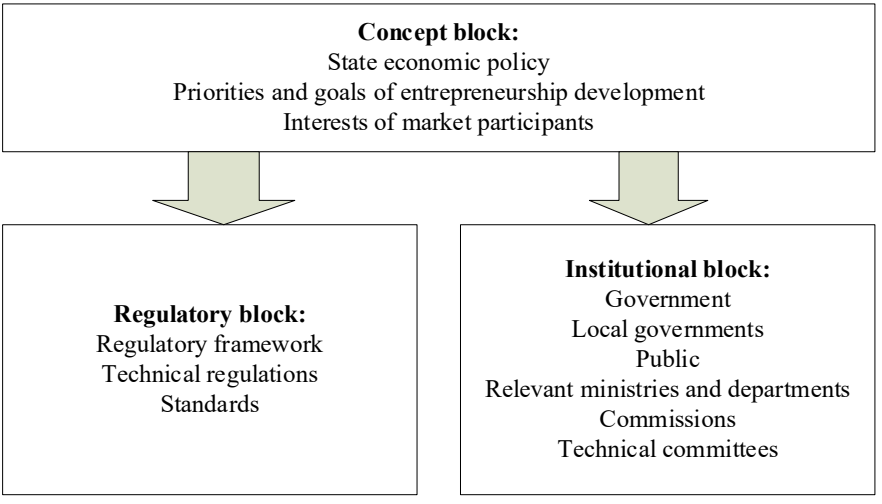

Fig.1. Regulatory policy system

Source: compiled by the authors.

Thus, the regulatory policy system is a mechanism of achievement, which is based on the introduction of a system of socio-economic society life values, the formation of principles system, priorities, strategic goals and objectives to meet the needs and interests of all market participants.

The implementation of regulatory policy is closely linked to the Regulatory Impact Assessment, which developed in the late twentieth century, but in the early 2000s it became widespread not only in Western Europe but also in countries on the initial stage of market economy formation (Bulgaria, Croatia, Serbia, Romania, Estonia, Latvia, Poland), as well as Ukraine and other post-Soviet countries. Regulatory impact analysis is a modern tool, a basic component of regulatory policy, used in most

developed countries to improve understanding of the economic and social legislation consequences.

One of the main regulatory policy principles in the economic sphere is the principle of transparency and consideration of public opinion, which provides openness to individuals and legal entities, their associations, regulatory bodies actions at all stages of their regulatory activities; mandatory consideration by regulatory authorities of initiatives, comments and proposals submitted in accordance with the law order by individuals and legal entities, their associations; the obligation and timeliness of bringing the adopted regulatory acts to the notice of physical and legal entities, their associations; informing the public about the implementation of regulatory activities. It is proposed to consider the implementation condition of some Good Governance postulates concerning transparency and openness of regulatory policy in the studied countries.

Table 1. Transparency throughout the policy cycle

Criterias	State					
	Czech Republic	Estonia	Latvia	Lithuania	Hungary	Poland
Inform the public in advance that:						
A public consultation is planned to take place	never	never	sometimes	sometimes	never	sometimes
Regulatory impact assessment (RIA)	always	never	never	always	never	never
Ex post evaluations are planned to take place	never	never	sometimes	always	never	never
Consult with stakeholders on:						
Draft regulations	frequently	always	always	always	always	always
Evaluations of existing regulations	sometimes	always	sometimes	sometimes	never	sometimes
Publish online:						
Ongoing consultations	never	always	always	always	always	always
Views of participants in the consultation process	always	always	always	always	never	always
RIAs	always	always	always	sometimes	never	always
Evaluations of existing regulations	sometimes	always	always	never	never	always
Policy makers use:						
Interactive website(s) to consult with stakeholders	never	always	never	never	never	always

Website(s) for the public to make ecommendations on existing regulations	never	always	never	never	never	never
Policy makers provide a public response to:						
Consultation comment	always	always	always	never	never	always
Recommendations made in ex post evaluations	sometimes	never	never	never	never	never

Source: compiled by the authors based on OECD (2021), OECD Regulatory Policy Outlook 2021.

The Baltic states, namely Estonia, Latvia and Poland, have the best and most uniform indicators of transparency. For example, in Latvia, an obligation to conduct a regulatory impact assessment (ODR) was introduced in 2009. It is predicted that all draft regulations, including by-laws submitted to the Cabinet of Ministers, are subjects to mandatory evaluation at the beginning of the policy development process and public consultation. Latvia has implemented several significant reforms based on the existing regulatory policy.

Poland pays active attention to the regulatory and legal component of the regulatory process. Following the amendment to the Procedure Rules of the Council of Ministers in 2019, bills can now be returned to ministries if public consultations have not taken place or if the consultation process has not met the requirements. Also in the context of strategic directions of public administration system development in April 2018, the Center for Strategic Analysis (CAS) was established, which participates in the legislative process.

Insufficient transparency in the implementing process organization of Lithuanian regulatory policy is due to the lack of unified official state regulation policy, although some of its elements are present in the development of strategic policy documents. The main part of Lithuanian government's efforts is aimed at reducing the administrative burden, mainly for business, developing requirements for monitoring and post-revision of existing primary laws.

The lowest level of regulatory policy transparency is observed in Hungary, although all basic and by-laws must pass RIA. However, the results of RIA are not made public. General public can express their recommendations for change or provide feedback on existing regulations by sending an e-mail to the relevant ministry. While the assessment of ex post regulations in practice is not carried out.

In Estonia prior regulation of impact assessment applies to all primary laws and individual by-laws. The Ministry of Justice Legislative Quality Department checks the quality of RIAs and may return them for review

in case of non-compliance. Estonia also pays sufficient attention to the accessibility and transparency of regulatory policies using online tools.

The implemented online information system EIS monitors all legislative changes and conducts analysis available on the central portal. In general, ex post assessments are carried out 3-5 years after the introduction of regulation and cover the areas of competition, administrative burden and overlap.

Czech Republic was one of the first to launch a program to reduce administrative burdens. Reducing bureaucracy remains a priority for the government. The Czech Republic has a well-developed regulatory impact assessment (RIA) process. All bills submitted to the government are published on the government portal, which is accessible to the public. To eliminate existing shortcomings, it is advisable to standardize the process of public consultations, stimulate stakeholders, including general public.

However, for all analyzed countries, the analysis of the current problem condition gives grounds to pay attention to the need to intensify public organizations and economic entities associations cooperation with the executive and local governments in regulatory activities. At the same time, the main regulatory policy goal for these countries in the context of effective public administration is to develop such regulatory acts that would ensure the achievement of goals at minimal cost.

While in these countries work is being done to improve the existing regulatory policy system, in Ukraine, which has stood on the path of European integration, the process of forming new institutional foundations in this area is accompanied by profound economic and political transformations. In the direction of European integration processes, Ukraine focuses on the development and implementation of a systemic regulatory framework and institutional support for regulatory policy.

At present, regulatory policy is fully integrated into the state economic policy. Regulatory impact analysis is a mandatory component of drafting Government decisions. Procedures and rules of regulatory policy are determined by the norms of the Law of Ukraine «About State Regulatory Policy Principles in the Sphere of Economic Activity» of 11.09.2003 № 1160-IV and a number of by-laws.

In particular, in 2015, in compliance with the requirements of Association Agreement between Ukraine and the European Union (Article 378), the norms of the European regulatory policy instrument SME-Test, called M-Test in Ukraine, were adapted and introduced into the Ukrainian legislative field. However, one of the problem areas for Ukraine is the need for a more formalized criteria definition by which regulatory impact assessment is required. Another imperfection for Ukraine is the lack of regulatory policy transparency, the lack of a single database with draft regulatory acts and performance monitoring reports.

The issue of effective public governance is closely linked to the regulatory policy impact on the market environment development, the condition of which can be characterized through the use of business conditions rating assessments («Doing Business»). The Doing Business rating consists of annual state regulation data about entrepreneurial activity from the standpoint of promoting or hindering business and contains quantitative indicators, that determine regulation norms of entrepreneurs' rights at the main stages of the enterprise life cycle:

1) starting a business (complexity of registration and licensing regulation activity);
2) operation (investment protection, access to credit, employment, terms of contracts, foreign trade, tax aspects);
3) termination or activity change (difficulty of business closing or restoring solvency).

Thus, each of these components in one way or another characterizes the national economy regulation. Despite the World Bank decision to stop publishing the rating in the fall of this year, the results of previous years provide a balanced assessment of the regulatory policy effectiveness.

High rating values indicate effective regulation of business activities and ensuring compliance with the entrepreneurs rights. Lets take a look on the position of above countries, as well as Ukraine, in the ranking of «Doing Business» for 2020 (Table 2).

According to the table, it can be concluded that the studied countries pay a lot of attention to improving their own regulatory policies. According to the general assessment, Lithuania, Estonia and Latvia have the highest level.

Table 2. Doing Business 2020 countries

Areas Of Business Regulation	State						
	Czech Republic	Estonia	Latvia	Lithuania	Hungary	Poland	Ukraine
Starting A Business	134	14 (+0,1)	26	34 (+0,1)	87 (+0,3)	128 (+0,1)	61
Dealing With Construction Permits	157	19 (+0,1)	56	10	108 (+0,1)	39 (+0,1)	20 (+3,9)
Getting Electricity	11 (+0,2)	53	61 (+0,1)	15 (+4,5)	125	60 (+0,9)	128 (+3,3)
Registering Property	32	6	25	4	29	92 (-6,6)	61 (+1,3)

Getting Credit	48	48	15	48	37	37	37
Protecting Minority Investors	61	79	45	37 (+2)	97	51	45(+2)
Paying Taxes	53	12 (+0,3)	16 (-0,7)	18 (+0,1)	56 (+1,4)	77 (-0,1)	65 (-1,3)
Trading Across Borders	1	17	28	19	1	1	74 (+2,5)
Enforcing Contracts	103	8 (+0,3)	15	7	25	55	63
Resolving Insolvency	16 (+0,1)	54 (-2,4)	55 (+0,2)	89 (-0,2)	66	25	146 (-0,3)
DB Rank	41	18	19	11	52	40	64
DB Score	76,3	80,6	80,3	81,6	73,4	76,4	70,2
Change in Score	no changes	-0,2	no changes	+0,6	+0,2	-0,5	+1,1

Source: compiled by the authors based on https://www.doingbusiness.org/en/doingbusiness.

If we trace correlation between the analysis of regulatory policy transparency and rating indicators, it is possible to conclude that higher transparency level, enjoyed by the Baltic States, corresponds to the higher rating of Doing Business. Hungary and Ukraine, which improved their positions compared to the previous year, also have positive dynamics. The largest number of reforms were carried out by the countries of the region in the international trade field, taxation, contracts enforcement and obtaining building permits. Thus, the analysis of this rating provides an idea of public administration ability to form and implement sound regulatory policies that promote business development.

To substantiate promising areas for further regulatory policy development, we propose the usage of strategic tools for regulatory impact analysis. Such method is SWOT-analysis, which should be integrated into the general tools of effective public governance. This system is designed not only to support more effective and efficient implementation of economic and social policies, but also contributes to the achievement of such «Good Government» goals as accountability, transparency and policy coherence.

Table 3. SWOT - analysis of the regulatory policy implementation

Strengths	point	Weighting factor	Weak sides	point	Weighting factor
1. Informing public about the development, implementation and evaluation of the regulatory policy implementation	9	0,37	1. Low level of public participation in regulatory activities	7	0,4
2. Legislative authorities involvement in the implementation of regulatory policy	8	0,23	2. Imperfection of the mechanism for bringing the executive to justice for the regulatory policy outcome	8	0,24
3. Existence of a common goal and commonality of selected influence measures	8	0,24	3. Lack of clearly defined principles of regulatory quality	9	0,28
4. The trend to improve personal freedoms	8	0,16	4. Imperfection of the regulatory policy monitoring mechanism	7	0,08
$\sum$ = 0,37*9+0,23*8+0,24*8+0,16*8 = 8,37			$\sum$ = 0,4*7+0,24*8+ 0,28*9+0,08*7=7,8		
Opportunities	**point**	**Weighting factor**	**Threats**	**point**	**Weighting factor**
1. Combining regulatory policy instruments, institutions and mechanisms to make the best use of their potential	7	0,4	1. Impossibility to overcome the bureaucratic model of public administration system functioning	7	0,25
2. Improving the efficiency and transparency of regulatory policy, improving ex-post evaluation	7	0,28	2. The difficulty of determining optimal relationship between the results of regulatory policy and costs	7	0,31
3. Harmonization of technical regulation system for business development	8	0,45	3. Possibility of obstacles related to the deepening crisis caused by the pandemic	7	0,33
4. Improving regulatory institutions quality in the budget and banking sectors.	9	0,14	4. The complexity of ensuring the balance of public authorities and business entities interests in regulatory activities	9	0,11
$\sum$ =0,4*7 + 0,28*7+0,45*8+0,14*9 = 7,84			$\sum$ = 0,25*7+ 0,31*7+0,33*7+0,11*9 = 7,22		

Source: compiled by the authors.

The status of regulatory policy system development affects the strategic vision and priorities of the state's economic policy. To substantiate conceptual solutions to improve approaches to implementation, we use

modified methodological approach SWOT-analysis, based on the group identification of threats and weaknesses, strengths and opportunities for regulatory policy in the analyzed countries of Eastern Europe. Assessment of opportunities and threats, strengths and weaknesses was carried out by the expert method on a scale in the range of 0-1 on the «degree of influence» criterion, which varied in the range: 0-0.3 – «low»; 0.31–0.6 «average»; 0.61–1.0 – «high».

Thus, dangerous weaknesses were identified as the lack of clearly defined regulatory quality principles and the imperfection of mechanism for bringing the executive to justice for the results of regulatory policy. The most dangerous threat is the difficulty of ensuring balance between the interests of public authorities and economic entities in regulatory activities.

The maximum «strengths and opportunities» field values confirm the ability to counter weaknesses, to prevent threats to the regulatory policy implementation and to indicate the ability to overcome threats through the strengths use and an effective system of public administration. Therefore, the specification of SWOT-analysis results allows to form target priorities of the regulatory policy implementation concept for the countries selected for the study (Fig. 2).

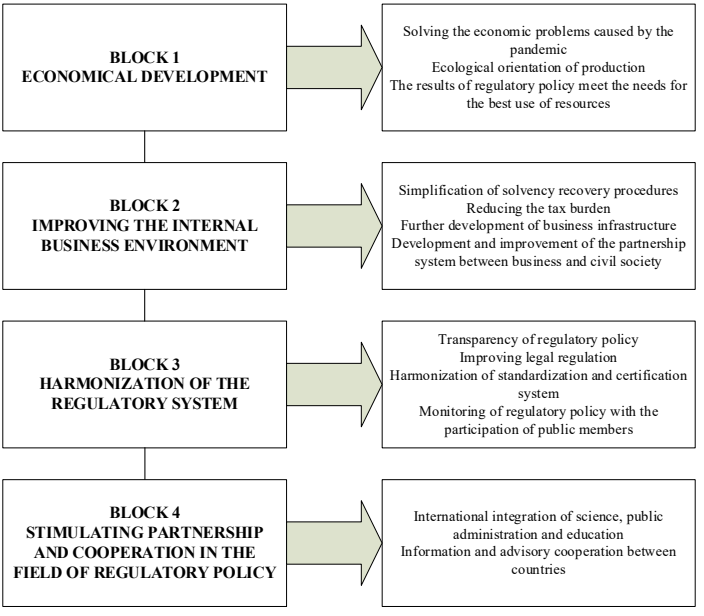

Fig. 2. Conceptual thesis for improving the process of implementing the Eastern European regulatory policy

Source: compiled by the authors.

The implementation of conceptual framework involves grouping the main areas of regulatory policy implementation process improvement in the following areas: economic development, improvement of the internal business environment, harmonization of the regulatory system, promotion of partnership and cooperation in regulatory policy.

Conclusion

Formation and development of the regulatory policy principles as a mechanism for influencing economic activity in the studied countries of Eastern Europe are different, but the chosen strategic directions in certain positions coincide, indicating a common development goal and efforts to achieve it. The regulatory policy of Eastern European countries is supported in the form of an expanded dialogue with all participants in the public administration process, primarily through the use of public hearings and tools.

The regulatory bodies tools are also expanding, as more and more attention is being paid to alternatives to traditional command-and-control models of regulation. Administrative simplification and elimination of bureaucracy are priority for the regulatory policy formation and implementation in the studied countries. First of all, it implies a reduction in the number of administrative requirements without compromising regulatory benefits of improving the regulation availability in the field of regulatory policy.

As follows from the study results, in Ukraine it is necessary to change the conceptual framework for the state regulatory policy implementation in order to focus on the principles of public administration. Public regulatory policy should be implemented in such way, as to focus not only on reducing the costs of regulatory acts, in particular for the business sector, but also on supporting the long-term public administration goals and the effective implementation of its functions. At the same time, the leading direction is to increase the regulatory activities efficiency and transparency of public administration structures with increasing their responsibility for ineffective management decisions.

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Justice as a condition for implementing Ukraine's European integration course

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Abstract

Using the dialectical and documentary method, the article analyzes the state of implementation of the strategic priority of reforming Ukraine's judicial system. It demonstrated that, under the current conditions for Ukraine, European integration is a key priority of the state's foreign policy. Issues hindering the successful implementation of Ukraine's strategic course towards European integration were identified, such as: Ukraine requires a comprehensive renewal of three bodies: the bar association, the law enforcement system, and the courts themselves. The conditions for the effective administration of justice have also been determined: updating of the High Council of Justice and the High Qualification Commission with the participation of international experts; creation of a new court to replace the Kiev District Court of Appeal, which will consider key decisions of state bodies; ensure the fair composition of the Constitutional Court; Building public confidence in the judicial and police system. It is concluded that it is important in the process of reform of the Superior Council of Justice to find a compromise between non-interference in the activities of this body, its components, and to guarantee the transparency and effectiveness of its decisions.

Keywords: justice; judicial reform; European integration; independence of judges; Superior Council of Justice.

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La justicia como condición para implementar el curso de integración europea de Ucrania

Resumen

Mediante el método dialectico y documental el artículo analiza el estado de implementación de la prioridad estratégica de reformar el sistema judicial de Ucrania. Demostró que, en las condiciones actuales para Ucrania, la integración europea es una prioridad clave de la política exterior del estado. Se identificaron las problemáticas que obstaculizan la implementación exitosa del curso estratégico de Ucrania hacia la integración europea, tales como: Ucrania requiere una renovación integral de tres órganos: el colegio de abogados, el sistema de aplicación de la ley y los propios tribunales. También se han determinado las condiciones para la administración efectiva de justicia: actualización del Consejo Superior de Justicia y la Comisión de Alta Cualificación con la participación de expertos internacionales; creación de un nuevo tribunal para reemplazar al Tribunal de Apelación de Distrito de Kiev, que considerará las decisiones clave de los órganos estatales; asegurar la composición justa del Tribunal Constitucional; Fomento de la confianza pública en el sistema judicial y policial. Se concluye que es importante en el proceso de reforma del Consejo Superior de Justicia encontrar un compromiso entre la no injerencia en las actividades de este órgano, sus componentes, y garantizar la transparencia y eficacia de sus decisiones.

Palabras clave: justicia; reforma judicial; integración europea; independencia de los jueces; Consejo Superior de Justicia.

Introduction

The democratic development of Ukraine and its political system presupposes the formation of an established and coordinated system of political and legal mechanisms and procedures for the realization of human and civil rights and freedoms. The development of a democratic state governed by the rule of law requires, firstly, the implementation of the rule of law, when the main activity of the state is aimed at ensuring conditions for effective implementation of human, civil rights, and freedoms, including guaranteed access to justice. Slobodyanik, 2015). The proclamation by the Constitution of Ukraine of the principle of separation of state power into legislative, executive, and judicial should promote, inter alia, the strengthening of guarantees of the independence of judges.

Seven years ago, Ukraine and the European Union signed an Association Agreement, which established Ukraine's course of integration with the European Union. Since then, Ukraine has been trying to introduce European standards in almost all spheres of life. Currently, Ukraine is undergoing the most difficult test for unity and territorial integrity, for the implementation of several reforms that will meet European standards (Sereda, 2017). A separate area of improving the constitutional and legal reform in Ukraine based on the experience of the European Union is the improvement of the constitutional principles of justice, or judicial and legal reform.

There is no doubt that judicial reform must have a legal settlement and a scientific basis that would further ensure the rights of the individual to a fair, independent and impartial tribunal. Work has long continued to reform the judiciary, law enforcement and the improvement of criminal justice, working with experts from the Council of Europe, the Venice Commission, the Organization for Security and Cooperation and the European Union.

A number of legislative acts aimed at improving the judicial system and administration of justice were adopted, in particular, the Laws of Ukraine: "On Amendments to Certain Laws of Ukraine (Regarding Certain Issues of the Judiciary and the Status of Judges)" of 2 February 2014 № 769 parliamentary control over the appointment, election, dismissal of judges, bringing them to justice; "On Amendments to the Code of Administrative Procedure of Ukraine regarding the jurisdiction of the Supreme Court of Ukraine" of March 14, 2014. № 887, which determines the legal and organizational basis for review by the Supreme Court of decisions of the Supreme Administrative Court; "On Restoration of Confidence in the Judicial System of Ukraine" of April 8, 2014 №1188, which determines the legal and organizational principles of attestation and lustration inspection of judges of courts of general jurisdiction; "On Amendments to the Constitution of Ukraine (Regarding Justice)" of June 2, 2016 №1401-VIII and "On the Judiciary and the Status of Judges" of June 2, 2016 №1402-VIII.

At the same time, noted that since 2014, the situation, despite certain steps to reform the judiciary, has not changed dramatically. Evidence of this is the results of opinion polls. Thus, the Razumkov Center published "Citizens' assessment of the situation in the country, the level of trust in social institutions and politicians, electoral orientations of citizens" proves that 42.5% do not trust the courts (the judiciary as a whole), but rather do not trust 32.9% of respondents, instead, 12.1% rather trust, and only 2.2% fully trust. The balance of trust / distrust is – 61.1% (Citizens' assessment of the situation in the country, the level of trust in social institutions and politicians, electoral orientations of citizens).

1. Methodology of the study

To obtain the most reliable scientific results, the article uses a number of philosophical, general scientific, special scientific approaches, methods and principles of scientific knowledge, which allowed to cover the chosen subject systematically, to reveal and analyze the main components of the problem. Crucial to the methodology of studying judicial reform as a basis for integration into the European Union is a common dialectical approach, which allowed to comprehensively and comprehensively outline the features of justice in Ukraine, to form a doctrine of judicial reform.

To understand the modern justice system of Ukraine, a historical approach was used, which is a general method of research that proceeds from the historical paradigm and factors (political, economic, social, cultural, etc.) influencing social development, and helps to track such influences in time. and analyze its evolution. This approach is also crucial in studying the genesis of judicial reform. The application of the comparative method contributed to the study of foreign experience in the functioning of analogues of the High Council of Justice of Ukraine.

The prognostic method was used to identify areas for improvement of judicial reform in Ukraine. The method of objectivity allowed to establish the reliability and completeness of the information used in the study. The use of the hermeneutic method contributed to the study of the content of doctrinal sources, which formed the most important theoretical and methodological achievements of scientists on the subject of research. Methods such as induction and deduction made it possible to form an introduction, intermediate and general conclusions.

2. Analysis of recent research

The analysis of scientific research on the constitutional and legal reform and integration of Ukraine into the European Union is carried out in various fields of science, the problem of European integration of Ukraine is and remains the subject of constant research. The problem of legal transformations in the European integration process, as well as international legal aspects of constitutional legislation is reflected in the scientific works of such lawyers as I. Bezzub (Bezzub, 2021), O. Holovatsky (Holovatsky, 2021), I. Mishchak (Mishchak, 2021), V. Pogorilko, V. Fedorenko, (Pogorilko, Fedorenko, 2006), T. Sereda (Sereda, 2017), N. Slobodyanyk (Slobodyanyk, 2015), S. Shelest (Shelest, 2021), A. Yakovlev (Yakovlev, 2009) and others.

Despite significant scientific achievements, the key issues of judicial reform in the implementation of Ukraine's European integration course

are not sufficiently developed in the constitutional and legal thought and are presented in fragmentary studies or aimed at certain aspects of judicial reform. In addition, this problem has been analyzed by scientists mainly through the prism of political, social and humanitarian factors. At the same time, issues often remain outside the scope of research, which are related to the complex, primarily legal, justification of judicial reform as a basis for Ukraine's integration into the European Union. The outlined circumstances determine the relevance of the study, determined the choice of its object and subject.

3. Results and discussion

3.1. General characteristics of the peculiarities of the administration of justice in Ukraine in the implementation of the European integration course

The solution of any scientific problem is impossible without the impossible without the analysis of the corresponding terminology, the substantiated scientific theories, doctrines, concepts. Judicial reform is no exception in this aspect, which is due to the need to develop modern approaches to the development of law and legislation, in particular the formation of a democratic, legal and social state.

Considering the peculiarities of the administration of justice in Ukraine, it is advisable to pay attention to the essence of the term «reform» in general. In the «Modern Legal Encyclopedia» the term «reform» means: 1) transformation, change, restructuring of any aspect of public life (orders, institutions, institutions); 2) formal innovation of any content, but reforms are usually called more or less progressive transformation; 3) changes in the structure of something that are made to improve, transform; 4) transformation, change, restructuring of any sphere of public or state life carried out by the state (Zaychuk, 2009). The reform is characterized by gradual changes, in its program the emphasis is on bringing to the end of the planned transformations, the complexity of the planned changes (Order of the cabinet ministers of ukraine № 847).

We will pay special attention to the definition of «integration – (Latin integratio –restoration, filling, from integer – whole), the concept of systems theory, which means the state of connectivity of individual differentiated parts as a whole, as well as the process leading to such a state» (Order of the Cabinet Ministers of Ukraine № 847). Integration is considered to be the highest stage of regionalization (a process that unites national social formations into a regional system), which is based on the territorial adjacency of states between which various social ties are actively emerging

and developing. The term «integration» is interpreted as a process of mutual adaptation, expansion (Bezzub, 2015) or unification of something into a single whole (Pogorilko, Fedorenko, 2006). It was in 2014 that the process of constitutionalization of Ukraine's European integration began, which initiated a new stage of foreign relations – European integration.

The very concept of «integration» implies the emergence of a new quality of formation of the European social system, going beyond cooperation in order to form a single structure that has supranational (supranational) characteristics. Analysis of the basic principles (principles) of the theory of integration gives grounds to assert that the process of European integration, in particular, is complex, has a complex nature, involves several stages and manifests itself in various forms. The experience of building the European Union convincingly proves the validity of this point of view (Tatsiy, Pogorilko, Todyka, 1999).

It should be noted that the vast majority of concepts of integration were based on the fact that European integration is a qualitatively new phenomenon compared to all previous types of cooperation between nation states – intergovernmental cooperation, confederation and federation (Eu-ukrainian association agreement, the atomic energy community and their member states, on the other side).

Ukraine's European integration will be carried out to the extent that Ukraine shares these values, so Ukraine's European integration documents and international agreements, as well as current legislation, should be guided by them (Tikhomirova, 1997). To achieve the appropriate level of perception of the Western tradition of law requires extensive and systematic use of European standards for the formation and functioning of legal and state institutions, civil society institutions and their relations with the state, implementation of the rule of law in all spheres of life (Tatsiy *et al*., 1999).

In our opinion, integration should be gradual and mutually beneficial, integration involves the integration of legal, economic, political and other subsystems, in particular, the goals of the integrated association should meet the interests and capabilities of the participants. It is worth noting that the European Union adhered to these principles during the formation, the European Community is the most perfect integration association, thanks to the idea of integration is effectively implemented in social practice.

Ukraine's integration into the European Union is legally defined as a priority area of foreign policy; in turn, it is necessary to be aware of the consequences of entering the legal space with the European community and the need to prepare a constitutional and legal mechanism that will allow to take measures for legal integration into the community. The current period of judicial reform in Ukraine is characterized by the search for ways to achieve the goal - the formation of the state as legal and democratic with

high economic and scientific potential, which in the future will become a member of the European community.

Thus, integration into the European political, economic and humanitarian space is determined by the strategic direction and system-forming factor of state and legal development; In the political and legal dimension, cooperation with the European Union means, above all, strengthening the democracy of the political system and its institutions, improving the legal framework and ensuring the transparency of national legislation, deepening the culture of democracy and respect for human rights.

3.2. Activities of the High Council of Justice as a basis for updating the judicial system in Ukraine

One of the basic values of a democratic society is the principle of independence of judges, which is a prerequisite for the rule of law. The establishment of the High Council of Justice is one of the elements of judicial reform in Ukraine. With the introduction of judicial reform, the High Council of Justice has acquired exclusive powers in the field of judicial governance and has become a leading body in matters of judicial career, disciplinary responsibility of judges, ensuring the authority of justice and independence of judges (Shelest, 2021).

The High Council of Justice can be called a unique institution for Europe, as it was established on the basis of the recommendations of the Council of Europe. Nor can the significance of the decision of the European Court of Human Rights in the case «Alexander Volkov v. Ukraine» (Judgment of the european court of human rights in the case «Alexander Volkov v. Ukraine») for the institutional development of domestic legislation), thanks to which the procedures concerning the judge's career and the disciplinary responsibility of a judge were significantly reformed. In particular, the principle of legal certainty in the context of disciplinary proceedings has been introduced, political influence on the issue of a judge's career has been eliminated, mechanisms for the protection of judicial independence have been introduced, and so on (Kuybida, 2018).

According to the Law of Ukraine Art. 1 «On the High Council of Justice» of December 21, 2016 The High Council of Justice is a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its functioning on accountability, accountability, virtuous and highly professional corps of judges, observance of the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors.

The High Council of Justice consists of twenty-one members, ten of whom are elected by the Congress of Judges of Ukraine from among judges or retired judges, two are appointed by the President of Ukraine, two are elected by the Verkhovna Rada of Ukraine, two are elected by the Congress of Advocates of Ukraine, two – elected by the All-Ukrainian Conference of Prosecutors, two –elected by the Congress of Representatives of Legal Higher Educational Institutions and Scientific Institutions. In addition, the President of the Supreme Court is a member of the High Council of Justice ex officio. Its members are elected (appointed) for a term of four years, and one and the same person may not hold the position of a member of the High Council of Justice for two consecutive terms (Law of ukraine «on the high council of justice»).

Compared to its predecessor, the High Council of Justice, the High Council of Justice has been given much broader powers. Thus, the main powers of the High Council of Justice include, but are not limited to: filing a motion to appoint a judge; making a decision regarding the violation of incompatibility requirements by a judge or prosecutor; ensuring that the disciplinary body conducts disciplinary proceedings against the judge; consideration of a complaint against the decision of the relevant bodies to bring a judge or prosecutor to disciplinary responsibility; making a decision on the temporary removal of a judge from the administration of justice and dismissal of a judge; consent to the detention of a judge or his detention or arrest; approval of the number of judges in court; appointment and dismissal of members of the High Qualification Commission of Judges of Ukraine, etc.

Therefore, these powers should make the High Council of Justice an effective mechanism for ensuring judicial reform in Ukraine. The council should become an arbiter in certain disputes that arise between society on the one hand, the government on the other and the judiciary as an independent branch of this government on the third (Ovsienko, 2019).

The High Council of Justice is the main body in the country's judiciary. In his hands is concentrated virtually full control over the appointment and dismissal of judges and bringing them to justice for violations. How professional and honest judges will work in Ukrainian courts and how successful judicial reform will be depends on who is a member of this body. That is why the reform and reformatting of the High Council of Justice is one of the conditions for resuming cooperation with the International Monetary Fund and receiving macro-financial assistance from the EU.

Lawyers note that most of the problems of the previous body were transferred to the newly created one: low level of trust of the population and the legal community, accusations of politically motivated decisions, reproaches in non-transparent selection of members, conflicts and power struggles with other bodies in the system. information (Holovatsky, 2020).

Another unresolved issue, which indirectly concerns the activities of the High Council of Justice, is ensuring the activities of the High Qualifications Commission of Judges of Ukraine. According to the first part of Article 3 of the Law of Ukraine "On the High Council of Justice", the powers of the High Council of Justice include, inter alia, the appointment and dismissal of members of the High Qualifications Commission of Judges of Ukraine.

The bills currently under discussion propose that the High Council of Justice approve all procedures and methods for the evaluation of judges by the High Qualifications Commission of Judges of Ukraine, which will certainly increase the influence of the High Council of Justice. On the other hand, transparent and open selection of its members is not proposed. In addition, the Council is reluctant to involve international experts in the election of members of the High Qualifications Commission of Judges of Ukraine and its cleansing. The members of the council are convinced that they themselves can solve these issues (Holovatsky, 2020).

In particular, the Chairman of the High Council of Justice Andriy Ovsienko expressed his conviction that after the adoption of the relevant law and its entry into force, the High Council of Justice, having worked out an algorithm of actions, is able to quickly form to the Competition Commission on Integrity (Ovsienko, 2021).

The G7 ambassadors stressed that "the most important part of a comprehensive reform, which includes the reform of the High Council of Justice, is to ensure the integrity, ethics and qualifications of the staff appointed to the judiciary. To this end, the ambassadors called on the Congress of Judges to postpone appointments to the High Council of Justice and the Constitutional Court, until transparent and credible selection processes are established" (The G7 ambassadors called on Ukraine to postpone its appointment to the high council of justice and the CCU).

In addition, the views of government officials and the public on the further functions of the High Council of Justice after the completion of judicial reform differ significantly. Therefore, it is important in the process of reforming this body to work out a compromise between non-interference in the activities of the Council and ensuring the transparency and effectiveness of its decisions.

The High Council of Justice also has an Ethics Council, which is responsible for establishing the compliance of a candidate for the position of a member of the High Council of Justice with the criteria of professional ethics and integrity. The creation of the Ethics Council is designed to meticulously select members of the High Council of Justice in order to prevent the manual operation of the body and restart it. The first composition of the Ethics Council is formed of three people from the Council of Judges and three people nominated by international and foreign organizations. The following are by analogy with the Competition Commission at the High Qualification Commission of Judges.

At the same time, on September 13, 2021, the Council of Judges of Ukraine was unable to select candidates for the Ethics Council, which was to clean up the composition of the High Council of Justice. Then the President's Office held a meeting with the ambassadors of the G7 and the EU and stressed that the Ethics Council should be formed no later than early October (Judicial reform in Ukraine: who and how should clean the higher qualification commission of judges and the high council of justice).

The Verkhovna Rada adopted in the second reading the draft law № 5068 on the reform of the High Council of Justice, which takes into account the conclusion of the Venice Commission, giving international experts a predominant vote in the Ethics Council: to make a decision, 2 out of 4 votes are distributed equally – preference is given to those votes where at least 2 international experts are represented. In our opinion, the main advantage of the bill № 5068 is that it provides a «reset» of the High Council of Justice with the participation of international experts, who will have a decisive voice. This is what international partners and the Venice Commission have previously called for. At the same time, it is important in the process of reforming the High Council of Justice to find a compromise between non-interference in the activities of the Council, its components, and ensuring the transparency and effectiveness of its decisions.

The bill also provides for a review of the integrity of members of the High Council of Justice, as well as changes the procedure for bringing judges to disciplinary responsibility. Assessing the draft law № 5068, the Venice Commission made a valuable recommendation to provide candidates for the High Council of Justice and its current members with the right to appeal the decision of the Ethics Council to the Supreme Court. It is equally important whether the recommendations of the Venice Commission were taken into account regarding the formation of the High Qualification. In our opinion, the international experts who will be involved in the selection of members of the High Qualifications Commission of Judges should have a decisive voice in the process in order to prevent the judges of the competition commission from blocking worthy candidates and assisting others.

Taking into account the recommendations of the Venice Commission, the position of the expert community and key international partners, as well as individual proposals expressed and substantiated by us in the article will contribute to quality judicial reform and the administration of fair justice in Ukraine. It is quite obvious that the further support of Ukraine by the world community depends on the quality of the implemented reforms. The role of independent international experts has once been the key to a history of great success in the case of election to the High Anti-Corruption Court. An ambitious «NATO compatibility plan» could be an effective motivator for significant changes in Ukraine.

3.3. Analysis of the Strategy for the Development of Justice and Constitutional Judiciary for 2021-2023

The President of Ukraine V. Zelensky signed a decree approving the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023 (hereinafter – the Strategy), which defines the basic principles and directions of the justice system development taking into account the best international practices. The document outlines the priorities for improving the legislation on the judiciary, the status of judges, the judiciary and other institutions of justice, as well as the implementation of urgent measures to improve the functioning of legal institutions.

Before examining the content of the Strategy, let's make a brief analysis of the state of reform of the justice system of Ukraine, which was launched in 2014. First of all, it should be noted that some progress in the field of justice has been achieved due to the direct participation of the public in the cleansing of the judiciary through the Public Integrity Council. One has not yet introduced a full-fledged jury trial, has not reformed the bar, has not realized the potential of alternative (out-of-court) dispute resolution, and has not been friendly to vulnerable groups - children and people with disabilities. The result has been the maintenance of political control over the courts and the preservation of problems in the judiciary.

The inability of the courts to ensure justice not only hinders the protection of human rights, has a negative impact on trust in the state, but also jeopardizes progress in other reforms. The lack of proper functioning of the justice system scares away investors and hinders Ukraine's economic development.

Should the reform be stopped? By no means. What has been started should be brought to a logical conclusion. The system approach is important. If we are talking about the reform of the judiciary, it is impossible to change the court without changing the prosecutor's office and without establishing interaction between the court, the prosecutor's office and the bar.

It is worth recalling that in early 2021, the ambassadors of the G7 countries announced a common vision of the successive steps that need to be taken to restore the confidence of Ukrainian society in the judiciary. Among the key tips are to «temporarily and minimally» increase the quorum for decisions of the Constitutional Court of Ukraine, postpone ongoing selection procedures for judges – until the introduction of new selection rules, ensure a significant role of international partners in screening all candidates for Constitutional Court of Ukraine judges, strengthen disciplinary responsibility and ethical requirements for judges and oblige them to remain impartial during the consideration of cases, etc. (Ambassadors of g7 countries presented road map of judicial and anti-

corruption reforms in Ukraine). In addition, it was once again necessary to resume the activities of the High Qualifications Commission of Judges and reform the High Council of Justice, which we have already mentioned (Ambassadors of G7 countries presented road map of judicial and anti-corruption reforms in Ukraine).

In order to improve access to justice, the Strategy envisages the development of a network and specialization of judges; development of alternative dispute resolution; interaction of law enforcement and judicial bodies with society; improvement of the institute of advocacy and prosecutor's offices; reorganization of local courts; change in the structure of the Supreme Court; determination of the procedural mechanism for ensuring the unity of judicial practice by the Supreme Court in cases that are not subject to cassation review; ensuring a sufficient level of resources for the effective organization of the work of the Supreme Anti-Corruption Court; higher level of working conditions and safety of judges and court employees; more balanced and fair load distribution; reduction of corruption risks in the administration of justice; adequate funding of the judiciary; development of e-justice; ensuring the system of execution of court decisions within a reasonable time, etc. (Mamchenko, 2021); changing the procedure for competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine, their verification of integrity and compliance with the level of professional competence with the possible involvement of international experts.

It is envisaged to introduce a mechanism to protect judges of the Constitutional Court from political and other pressure during the adoption of decisions and conclusions. According to the presidential decree, the Legal Reform Commission, together with representatives of central and local authorities, the public and experts, should develop an Action Plan for the implementation of this document, as well as inform the President about the implementation of the strategy.

If we turn to the analysis of the content of the Strategy itself, it mainly has general formulations that can be interpreted quite broadly (both in the direction of reforms and in the direction of preserving the status quo); does not contain any clear criteria for achieving the goals of the strategy, which could indicate its successful or unsuccessful implementation, but is abundantly dotted with the classical Ukrainian chancellery such as «improvement», «improvement», «expansion», «compliance», «optimization», etc.

The provisions of the strategy for the formation of the High Qualifications Commission of Judges are too general and will not provide a new quality of the body, even if they are formally implemented. The strategy stipulates that «in the future» the High Qualifications Commission of Judges should be subordinated to the High Council of Justice. This contradicts the provision

on the independence of the High Qualifications Commission of Judges. It is also not specified under what conditions such subordination should take place (Barkar, 2021).

The document proposes to improve the procedure for filling vacancies in local courts with «separate» competitive procedures, taking into account the criteria of integrity and professionalism. The introduction of such «separate rules» can be used to increase the influence of a dishonest High Council of Justice on this process. In our opinion, improving the procedure for selecting members of the High Council of Justice with the involvement of international experts and verifying the integrity of current members of this body - formally meet the obligations of the Memorandum of the International Monetary Fund and the European Union, but are too general and need specification.

The power of the High Council of Justice to appoint court chairmen if the judges themselves do not elect them for a long time is a return to the infamous practice that existed before 2014. At that time, the judiciary was governed by the High Council of Justice, through which the «vertical of the judiciary» was formed. The presidents of the courts must have exclusively representative functions, or this position must be abolished altogether. The provision on the establishment of an «autonomous personnel and disciplinary body» at the High Council of Justice is obviously in line with the provision on the subordination of the High Qualifications Commission of Judges to the High Council of Justice. In our opinion, such changes cannot be introduced before the formation of an independent and honest composition of the High Council of Justice.

Powers of the High Council of Justice to recall judges from resignation (who have passed the qualification assessment and are in accordance with integrity) – previously they wanted to return to office all dishonest judges who resigned because they did not want to pass the qualification assessment. We believe that the authority of this body to coordinate budget requests for court funding is another opportunity to control the courts through their subordination to the High Council of Justice, which will be able to reward loyal courts with a generous budget and punish the independent. The budget planning system must preserve the independence of each court.

At the same time, the analysis showed that the Strategy proposes some really necessary steps for changes in the judicial system of Ukraine. In particular, the positive provisions of the strategy are the clauses on the return of criminal liability for an unjust decision; termination of resignation of judges in case of disciplinary misconduct; removal of a judge from an administrative position at the same time as removal from the administration of justice.

We also consider positive the introduction of a mechanism for checking the integrity of current judges of the Constitutional Court, as well as the introduction of a transparent procedure for competitive selection of judges of the Constitutional Court with checking for integrity with the possible involvement of international experts. This approach is fully in line with the concept developed by public experts and the recommendations of the Venice Commission.

The strategy envisages the transfer of part of the exclusive jurisdiction of the Kyiv District Court of Appeal to the Supreme Court, and further the creation of a separate higher court to hear cases against national authorities and the involvement of international experts in the selection of judges. In addition, it is proposed to introduce a mechanism for checking the integrity of current judges of the Constitutional Court, as well as to introduce a transparent procedure for competitive selection of judges of the Constitutional Court of Ukraine with integrity checking with possible involvement of international experts. This approach is fully in line with the concept developed by public experts and the recommendations of the Venice Commission (European commission for democracy through law).

Meanwhile, the conclusions on the legislative initiatives of the President of Ukraine concerning the activities of the Constitutional Court of Ukraine were published by the Venice Commission. The conclusions state that in general, there are many improvements, but also shortcomings that need to be corrected.

It should be noted that the draft law № 4533 on the constitutional procedure takes into account many of the recommendations of the Venice Commission provided in the urgent opinion on the reform of the Constitutional Court. At the same time, the Venice Commission calls the lack of provisions on a new system of competitive selection of judges with the participation of the international component a key shortcoming of this bill, as recommended in the urgent opinion.

One of the main recommendations of the Venice Commission concerns procedural economy: the consideration of constitutional complaints, during which the senate finds an unconstitutional provision of the law, should be referred to the Grand Chamber only if the president or parliament requests such a transfer. With regard to disciplinary proceedings, according to the commission, instead of the executive, the initiative to initiate disciplinary proceedings should be transferred to the National Anti-Corruption Agency within its competence. In order to effectively reform the judicial system of Ukraine, it is necessary to «reset» the Qualification Commission of the High Council of Justice with a decisive vote of international independent experts, liquidate the Kyiv District Administrative Court and create a High Administrative Court by analogy with the High Anti-Corruption Court.

Acquaintance with the provisions of the Strategy causes a lot of remarks – from the specified terms of its completion and up to the vision of the developers of the document of the powers and status of individual bodies. Among the main remarks is the potential expansion of the powers of the High Council of Justice, as well as the generality of many provisions, which in the future may lead to their arbitrary interpretation and increase the President's influence on the judiciary. On the other hand, the implementation of the Strategy, taking into account the key comments, will show the transparency of government actions, communication between the President's Office and the expert community and the public sector, and ultimately increase public confidence not only in the judiciary but also in government.

In general, while positively assessing Ukraine's desire to develop effective mechanisms for ensuring justice as a condition for implementing Ukraine's European integration course, it is necessary to significantly reconsider the processes that make up judicial reform in Ukraine, first of all change approaches to roles of independent public experts. It is also necessary to focus on raising the standards of training of lawyers and privatization of dispute resolution. Other arguments and suggestions aimed at improving the situation in this area will be presented in the next section of the article.

3.4. International standards for the functioning of analogues of the High Council of Justice Abroad

It is obvious that public relations, which determine the peculiarities of the formation and functioning of the judiciary, increasingly require constitutional consolidation, which should become a determining factor in ensuring its independence. Therefore, the creation of a new mechanism for the functioning of the judiciary in Ukraine was initiated in connection with the implementation of judicial reform in 2016 (Constitution of Ukraine).

In the system of the judiciary, the Constitution of Ukraine enshrined the provisions on such a constitutional body as the High Council of Justice. According to the Law of Ukraine "On the High Council of Justice" of December 21, 2016, it is a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its accountability and accountability, formation of a virtuous and highly professional corps of judges, observance of the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activity of judges and prosecutors. So, in fact, the High Council of Justice should become one of the guarantees of the independence of judges as a collegial, independent constitutional body of state power and judicial governance, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary.

The basic elements of the independence of bodies that are designed to ensure the formation and functioning of the judiciary through direct participation in the selection of candidates for judges, their appointment and dismissal are laid down in a number of international acts. Such acts include universal standards for the functioning of the judiciary, including the systems for the selection, appointment and promotion of judges contained in the UN Basic Principles on the Independence of the Judiciary Approved by the UN General Assembly. In particular, the Basic Principles on the Independence of the Judiciary, approved by General Assembly Resolutions 40/32 and 40/146 of 29 November and 13 December 1985, state, inter alia, that the independence of the judiciary is guaranteed by the state and enshrined in the country's constitution or laws.

All state and other institutions are obliged to respect and adhere to the independence of the judiciary (paragraph 1) (Basic principles on the independence of the judiciary). The "Draft Universal Declaration of the Independence of Justice" (the "Singwie Declaration") states that in cases where the law provides for the discretionary appointment of a judge to his or her appointment or election, such appointment should be made by a judicial body or a higher judicial council, if such exists (13) (Draft universal declaration of independence of justice).

At the same time, there are a large number of regional European standards that define general principles and guarantees, which are also subject to implementation under certain conditions. For example, in the framework of the Council of Europe, one of the most fundamental international instruments in the field of justice is Recommendation CM / Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November. 2010. It contains the basic principles of the independence of the judiciary and aims to establish and strengthen the independence of judges as holders of the judiciary. It is noted that councils of judges should demonstrate the highest level of transparency regarding judges and society by improving pre-established procedures and making informed decisions. In the performance of their duties, Councils of Judges should not interfere with the independence of individual judges (CM / rec (2010) 12 recommendation of the committee of ministers of the council of europe to member states on judges).

It is also worth mentioning the European Charter on the Status of Judges of 10 July 1998, which stipulates that the recruitment, appointment, service and termination of judges must be decided by an independent body, half of which is represented by judges. In addition, this body should be formed on a parity basis with a wide range of representatives. A necessary condition for an independent procedure for the formation of the judiciary is its legislative consolidation. This body must become the guarantor of the independence

of justice in the state as a whole and the guarantor of the independence of each individual judge in the administration of justice in particular. The said body must also be directly involved, ie in accordance with its submission, by its decision, or on its recommendation or with its consent, in the promotion of judges, as well as in disciplinary proceedings against prosecuted judges. One of the mandatory guarantees of judges' independence is the mandatory review of all decisions on the resignation of judges, with the exception of two grounds: reaching the age limit for holding office and expiring the term of office of a judge (European charter of judicial status).

Therefore, it is quite clear that the problem of ensuring the independence of the High Council of Justice of Ukraine is relevant for many countries where there are relevant bodies, which led to the emergence of these international acts, which determine the general principles of these bodies. The specificity of international law leaves its mark on the relevant international standards, which are traditionally divided into mandatory and advisory. At the same time, ensuring the independence of the High Council of Justice and relevant bodies of foreign countries by forming a system of legal guarantees will contribute to the implementation of justice as a necessary precondition for proper performance of its constitutional functions by the court. is the main duty of the state.

It is international acts and national legislation of individual European countries that allow us to fully identify the general and specific features of the constitutional regulations and the status of relevant bodies and suggest ways to improve the work of both the High Council of Justice and the judicial system of Ukraine as a whole. Thus, the systematic analysis of the constitutions and relevant legislation of individual European countries provides an opportunity to identify such trends. First, the purpose of establishing these bodies is to maintain the necessary balance between the independence of the judiciary, on the one hand, and the possibility of exercising public control over its activities, on the other.

As a result, the main task of the formation and functioning of judicial councils was the need to adhere to the principle of independence of the judiciary. This principle is a key element of the rule of law of all democracies, which determines the place of the court in the system of state power and is based on the principle of separation of powers. It is under such conditions that the High Council of Justice and relevant bodies in foreign countries are called upon to become the necessary tools to ensure the independence of the judiciary as a whole.

And secondly, the actual consequence of consolidating the principles of separation of powers and independence of the judiciary was the formation of special judicial bodies (judicial councils), which, representing the judiciary, do not participate in the administration of justice. It is noteworthy that most of the new constitutions of democracies in Central and Eastern

Europe contain rules governing the legal status of these bodies. Therefore, the process of «constitutionality» of the legal status of these bodies tends to spread, and this trend is gradually becoming global.

Another aspect that should be noted in the continuation of the previous generalizations. Analysis of the constitutions of foreign countries makes it possible to identify two main ways to regulate the legal status of the Councils we are considering. The first group includes countries that are an extended constitutional regulation of the legal status of the respective judicial councils. These include the constitutions of countries such as Belgium (art. 151), Greece (art. 88), the Slovak Republic (art. 141a), Turkey (art. 159), France (art. 65), and Moldova (art. 122-123), Macedonia (art. 104-105), Cyprus (Articles 157), Italy (art. 104-105). The constitutions of these countries define quite thoroughly the status of the relevant bodies, which may include the place and role in the judiciary, the set of powers, composition, terms of office, responsibilities of members of judicial councils and other components of their status.

Another group includes the constitutions of countries where the legal status of the judicial councils in question is very succinctly defined. These are the constitutions of countries such as Romania (art. 132), Slovenia (art. 131), Croatia (art. 121), Portugal (art. 218), Poland (art. 186-187), Spain (art. 122.1) and some others.

Ukraine set out to establish the High Council of Justice as a body with constitutional status only in the post-Soviet period. During this period there is a legal registration of institutional bases of judicial power and the legal status of its holders, fixing of guarantees of their independence and autonomy of judges. The basic principles of the independence of the judiciary in terms of its formation and functioning, which are directly related to the selection of candidates for judges, their appointment and dismissal are laid down taking into account a number of international instruments and relevant foreign experience.

Thus, the European Community proposes to introduce into the legal space a model of organization of the judiciary through the establishment of appropriate bodies that are endowed with organizational and operational independence from other branches of government. In addition, the determining tool for ensuring the independence of the High Council of Justice and the relevant judicial councils in foreign countries is the consolidation at the legislative level of their legal status: either in the constitution or in the relevant law (Decision high council of justice. On the provision of the Advisory Opinion on the Draft Law).

The key role of judicial councils is to be independent guarantors of the independence of the judiciary. However, this does not mean that such councils are bodies of judicial «self-government». To avoid corporatism

and politicization, the judiciary should be monitored through non-judicial members of the judiciary. Only a balanced method of appointing members of these bodies can guarantee the independence of the judiciary. Corporatism must be balanced by the membership of other legal professions, «users» of the judiciary, that is, lawyers, prosecutors, notaries, scholars, and civil society. Involvement of other branches of government should not pose a threat of undue pressure on members of the High Council of Justice and the judiciary.

According to some lawyers, unfortunately, in the course of judicial reform in Ukraine, certain risks were realized: members of the High Council of Justice, appointed by a quota of judges, cover their influential colleagues; representatives of the parliament and the President lobby the interests of political circles; some members of the High Council of Justice are generally appointed illegally; there is no question of renewing and cleansing the judiciary from dishonest people at all (What are the «european standards» of judiciary and how should they be applied?).

Thus, there is no standard of «judges elected by judges» that would be mandatory or even desirable for Ukraine. On the contrary, it is appropriate to talk about the recent formation of another standard for countries in transition democracies, in which non-judicial representatives play a significant or even decisive role in the judiciary: the public, representatives of other legal professions or international experts.

In general, it should be recognized that the integration of international human rights law into Ukrainian law is a complex procedure that requires special doctrinal understanding (Yakovlev, 2009). The adoption of the Law of Ukraine «On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights» of 23 February 2006 №3477-IV helped to determine the grounds and procedure for the application of its decisions and practice by the courts of Ukraine. However, the Law did not eliminate the most difficult issues related to determining the place of international treaties of Ukraine in the legal system of Ukraine, with the relationship of the European Court of Human Rights with the rules of universal human rights treaties, which «remain» part of Ukrainian law.

The law does not provide a clear answer to a number of legal issues, obviously applying a general approach – the law cannot regulate the specifics of the application of judicial practice by courts, it can only legalize the very possibility of application. It is the Ukrainian courts that must develop approaches to the application of the decisions of the European Court of Human Rights.

Conclusions

The study of the peculiarities of the administration of justice in Ukraine as a condition for the implementation of the European integration course made it possible to draw the appropriate conclusions, which are presented below in the form of abstracts.

Reforming Ukraine's judicial system requires a comprehensive overhaul of the three bodies - the bar, the law enforcement system and the courts themselves, as they work together. The judiciary should gain independence and act self-governingly with the involvement of international experts and members of the public in certain procedures.

The strategy for the development of the judiciary and the constitutional judiciary is designed for 2021-2023, but it will not be possible to implement it in such a short time, not to mention that the implementation of some of its provisions requires a clear understanding of the sequence missing in the document.

The conditions for the effective administration of justice in Ukraine are: renewal of the High Council of Justice and the High Qualifications Commission with the participation of international experts; cleaning and renewal of ships; creation of a new court to replace the District Court of Appeal of Kyiv, which will consider key decisions of state bodies; ensuring the fair composition of the Constitutional Court. These changes should take place against the background of public confidence in the judiciary and law enforcement system.

The basic principles of the independence of the judiciary in terms of its formation and functioning, which are directly related to the selection of candidates for judges, their appointment and dismissal are laid down taking into account a number of international instruments and relevant foreign experience. The determining tool for ensuring the independence of the High Council of Justice and the relevant judicial councils in foreign countries is the consolidation at the legislative level of their legal status: either in the constitution or in the relevant law. It is important in the process of reforming the High Council of Justice to find a compromise between non-interference in the activities of the Council, its components, and ensuring the transparency and effectiveness of its decisions.

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Administrative and legal principles for the application of State policy in the field of economic security

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Abstract

The objective of the research was to determine the scope and meaning of "administrative and legal regulation" and its components. The main purpose of the administrative and legal regulation of the economic security of the state is to ensure the implementation and protection of the economic rights, freedoms, and legitimate interests of natural and legal persons. The methodology was based on the analysis of documentary materials for the regulation of the economic security of the state. They emphasize in the conclusions that, in its essence, the administrative and legal regulation of economic security must be considered in two aspects: 1) as a set of rules that regulate public and administrative relations in the field of economic security; 2) as a systemic organizing influence of state bodies specially authorized in economic and social relations through norms "objective and subjective" and other legal means, mainly of an administrative nature, for the purpose

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of their protection, improvement and creation of the appropriate conditions for further development in the context of ensuring national security.

Keywords: national security; economic security; legal regulation; economic rights; social welfare.

Principios administrativos y legales de aplicación de la política estatal en el ámbito de la seguridad económica

Resumen

El objetivo de la investigación fue determinar el alcance y significado de la "regulación administrativa y legal" y sus componentes. El propósito principal de la regulación administrativa y legal de la seguridad económica del estado es garantizar la implementación y protección de los derechos económicos, las libertades y los intereses legítimos de las personas naturales y jurídicas. En la metodología se trabajó con base al análisis de materiales documentales para la regulación de la seguridad económica del estado. Destacan en las conclusiones que, en su esencia, la regulación administrativa y legal de la seguridad económica debe ser considerada en dos aspectos: 1) como un conjunto de normas que regulan las relaciones públicas y administrativas en el ámbito de la seguridad económica; 2) como una influencia organizadora sistémica de los órganos estatales especialmente autorizados en las relaciones económicas y sociales a través de normas "objetivas y subjetivas" y otros medios legales, principalmente de carácter administrativo, con el propósito de su protección, mejora y creación de las condiciones adecuadas para un mayor desarrollo en el contexto de garantizar la seguridad nacional.

Palabras clave: seguridad nacional; seguridad económica; regulación legal; derechos económicos; bienestar social.

Introduction

Importance of economic security of the state for its development and existence in the modern world is difficult to be overestimated. A sustainable economy (able to meet the needs of the population and create conditions for realization of basic human rights and freedoms enshrined in the Constitution of Ukraine) is a kind of an "engine" of development in any country, which increases its international and regional prestige and guarantees protection from internal threats of socio-political, economic, and military nature.

At the same time, it should be noted that economic relations, being the basis of economic security, require proper regulation, as well as clear and coordinated activities of authorized public authorities, which can improve and develop such public relations by means of exercising their powers.

The above-mentioned activity of the authorized state authorities responsible for formation and realization of state policy in the sphere of economy mostly lies in the administrative and legal sphere, as it is closely related to public administration and implementation of governmental and administrative powers aimed at stability and predictability of economic relations. Despite existence of objective economic laws, the state is that very institution responsible for the proper regulation of social relations in the economic sphere, their monitoring and adjustment, which leads to the application of certain legal norms, forms and methods of management which have administrative and legal nature. Based on the proposed theses, we can conclude that the scientific study of the problems of administrative and legal regulation of economic security of the state becomes relevant and timely in modern conditions of development of the state and national legal science.

1. Literature review

The issue of administrative and legal regulation cannot be considered completely without detailed analysis of contents of such general category as "legal regulation" and its components. In this regard, it should be noted that this term has been the subject of research by many scholars in various fields of law: theories of state and law, constitutional law, administrative and civil law, etc. In the most general form, legal regulation can be defined as regulation of social relations through the rules of law and other legal means (Cherdantsev, 1993); impact of law on public relations through legal means: norms of law, legal relations, acts of low realization (Bobylev, 2002). According to A.T. Komzyuk, legal regulation is a specific influence exerted by law as a special normative institutional regulator. At the same time, legal regulation has a purposeful, organizational, effective nature and it is carried out with the help of an integral system of tools that really express the very matter of law as a normative institution of formation - the regulator (Komzyuk, 2002).

I.M. Shopina studied the concept of legal regulation from several positions, and namely: in the instrumental aspect, legal regulation is a part (element) of the state's legal influence on public relations through specific legal means (norms of law, legal relations, acts of law enforcement) in order to streamline, consolidate, protect and develop public relations; in the activity-oriented (pragmatic) aspect, legal regulation is the activity of

the state, its bodies (authorities) and officials, as well as authorized public organizations aimed at establishing binding legal norms (rules) of conduct for subjects of the right, implementing these norms in specific relations and applying state coercion to offenders in order to achieve a stable law and order in the society (Shopina, 2011).

V.I. Teremetsky performed his research in the context of the activity-based (pragmatic) approach. In his opinion, legal regulation covers 1) specific activities of the state (its rule-making bodies), related to development of legal guidelines and determination of legal means for ensuring their effectiveness; 2) activities of direct participants in public relations, aimed at finding and attracting means of legal regulation to coordinate their behavior with the law (its principles, ideas, purposes) (Teremetsky, 2012). R.Y. Demkiv, like previous scholars, emphasizes that legal regulation as a legal phenomenon (normative-legal regulation) is a system of actions and operations carried out by public authorities in established procedural forms with the help of certain methods and legal means aimed at establishing and implementing certain models of social development (Demkiv, 2015).

Approaches to the components of legal regulation also vary in scientific works. There are two main approaches: the broad one and the narrow one. According to the first approach legal regulation includes all forms of state influence on the behavior of public relations (law, acts of law, legal agreements, ensuring implementation of law, including by means coercion, legitimacy, and order). In turn, the narrow approach says that legal regulation cannot be understood as all forms and means used by the state for regulation of public relations (Demkiv, 2015).

At the same time, it should be noted that today the problem of administrative and legal regulation of state economic security is beyond the scope of systematic scientific study, and therefore there is a need to update this issue and its coverage in the specialized literature.

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of the economic security of the state. The dialectical method of cognition of the facts of social reality is the foundation where formal-legal and, rather, legal approaches are based in many respects. The formal-dogmatic method contributed to development of the author's explanation of the current state, problems, and practical role of legal technologies for further development and improvement of economic security of the state. The officially legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of economic security of the state.

3. Results and discussion

O.I. Bezpalova, notes that two separate components can be separated in the mechanism of legal regulation of police authorities. They are the static component and the dynamic component. The static component includes legal norms that regulate the specifics of police management. Other elements of the legal mechanism of police management (institutional component, principles, forms and methods, legal relations, and resource component) are a dynamic component. Legal support (i.e., the static component) is an integral part of the police management mechanism (Bezpalova, 2017).

Based on the above-mentioned positions, we will try to define the specifics of the term "administrative and legal regulation". There is no doubt that this concept is related to the sphere of social relations, which are included in the subject of administrative law. If we analyze the scientific position of such well-known scientists-administrators, as R.S. Melnyk, we can conclude that since administrative law regulates public relations that arise in connection with the public administration's assuring human and civil rights and freedoms, it is characterized by certain limits of legal regulation - the sphere of activity of executive and administrative bodies and public relations of managerial nature, which are formed in this sphere (Melnyk, 2014).

Therefore, if we talk about the sphere of economic security and economic relations that form its basis, it should be noted in advance that it is economic relations of an administrative nature should belong to the object of administrative and legal regulation. The comparative analysis of scientific works on the problems of administrative and legal regulation of various spheres of social and political life shows the following results:

- In the sphere of environmental security of the state the object of administrative and legal regulation is presented as public relations in the form of behavior and actions of people which take place in connection with the fact that public authorities, primarily public administration, provide environmental rights and freedoms of humans and citizens as well as interests of the society and the state in this area (Yemets, 2019).
- Administrative and legal regulation of the judicial branch of power i presented as purposeful influence of the norms of constitutional and administrative law on public relations in this sphere.
- Electoral relations, as an object of administrative and legal regulation, characterize a special type of social relations that are regulated by the purposeful influence of administrative and legal norms (Oliynyk, 2017).

- Oil and gas complex as an object of administrative and legal regulation is a system of public relations in this area, regulated by the rules of administrative law.
- Administrative and legal regulation of land relations is aimed at ensuring implementation and protection of rights, freedoms and legitimate interests of the state, individuals, and legal entities regarding the possibility of possession, use and disposal of land (Leheza ect., 2018).

Based on the above legal positions, we can conclude that the administrative and legal regulation of economic security can be formulated as a complex concept that includes two components:

- A set of administrative and legal norms governing administrative social relations which are formed concerning production, distribution, exchange and consumption of material goods and services, ensuring security and stability of economic system to external and internal threats and which guarantee protection of national economic interests socio-economic rights and freedoms of citizens, as well as create conditions for further development and growth of the national economy and ensure competitiveness of the state in the global economic environment;
- A systemic organizing influence of specially authorized state bodies on economic and social relations through administrative and legal norms and other legal means, primarily of an administrative nature, with the purpose of their protection, improvement, and creation of appropriate conditions for further development in the context of ensuring national security of Ukraine (Leheza *et al*., 2021).

The definition we have formulated makes it possible to confidently declare that Ukraine's economic security is a full-valued object of administrative and legal regulation on the following grounds:

1. Social relations formed in the sphere of economy are the subject of practical activity of the executive bodies authorized for realization of tasks and functions of the state in various spheres of public life, in the sphere of national security.
2. A specially authorized body of the state, which has an object competence and a territorial competence defined by the law, is one of the parties of public relations in the sphere of economic security as an object of administrative and legal regulation. As stated in the normative acts of our country, the main components of economic security include financial security, macroeconomic security, industrial security, energy security, foreign economic security, investment, and innovative security. The components of financial

security include: banking security, security of the non-banking financial sector, debt security, budget security, currency security, monetary security (Leheza ect., 2020).

3. A specific feature of public relations in the sphere of economic security as an object of administrative and legal regulation is that the above executive authorities and other authorized entities have the right to demand certain behavior from relevant participants in certain relations by means of establishing administrative and legal norms. For example, the Ministry of Energy and Environmental Protection develops and approves safety regulations for electricity supply and monitors safety of electricity and natural gas supply, in particular it monitors balance of demand and supply of natural gas in Ukraine, sectoral technical regulations and regulatory characteristics of the technological costs of electric energy.

4. The Ministry of Finance of Ukraine provides fiscal risk management, it prepares the Budget Declaration together with the main managers of the state budget, it develops instructions on preparing proposals for the Budget Declaration and indicative limits of state budget expenditures and communicates them to the main managers of the state budget [20]. The National Security and Defense Council of Ukraine makes decisions on: determination of strategic national interests of Ukraine, conceptual approaches and directions of ensuring national security and defense in the economic sphere; draft state programs, doctrines, laws of Ukraine, decrees of the President of Ukraine, international treaties, other regulations and documents on national security and defense; measures of political, economic, social and other nature in accordance with the scale of potential and real threats to the national interests of Ukraine;

5. Relations in the sphere of economic security may arise on the initiative of the authorized entity, on the initiative of the Cabinet of Ministers of Ukraine, the central executive body, other authorized officials, while the consent of the other party involved is not required for their occurrence, in contrast to civil law relations.

6. Administrative sanctions (penalties) have been established for illegal actions in the sphere of economic security. These penalties are regulated by the Code of Administrative Offenses and other regulations, which include administrative and economic sanctions (Leheza *et al*., 2021).

According to Article 238 of the Commercial Code of Ukraine, administrative and economic sanctions (i.e., measures of organizational, legal, or proprietary nature aimed at stopping offenses performed by a business entity and elimination of their consequences) may be applied to

business entities for violation of the rules of economic activity established through legislative acts (Leheza *et al.,* 2021).

The state (public) authorities and local self-government bodies, in accordance with their powers and in accordance with the procedure established by the law, may apply to business entities the following administrative and economic sanctions: withdrawal of profit (income), administrative and economic fine, collection of fees (mandatory payments), revocation of license (patent) for performance of certain economic activities, restriction or suspension of the business entity's activities, liquidation of the business entity (Law of Ukraine, 2003).

In addition, in accordance with the provisions of the Budget Code of Ukraine (Article 117), the following measures of influence may be applied to the participants of the budget process for violation of the budget legislation:

- Warning about improper implementation of budget legislation with the requirement to eliminate violations of budget legislation - such warnings are used in all cases of violated budget legislation.
- Suspension of operations with budget funds - it is applied for violation of budget legislation in accordance with the procedure established by Article 120 of the Budget Code.
- Suspension of budget allocations - it is used for violations of budget legislation, defined by Article 116 of the Budget Code.
- Reduction of budget allocations - it is applied for violation of budget legislation, defined by Article 116 of the Budget Code (Law of Ukraine, 2010).

1. For the violations described above in the economic sphere, the guilty party is liable to the state and not to the other party, as it is in case with civil and legal relations;
2. In case of disputes between relevant subjects of economic security relations these disputes can be resolved both administratively and in court. According to Article 214 of the Budget Code of Ukraine, the decision to apply a measure of influence for violation of budget legislation may be appealed to the issuing authority or in court within 10 days of its issuance, unless otherwise provided by the law (Law of Ukraine, 2010).

The Commercial Code of Ukraine states that a business entity has the right to appeal to a court against a decision of any public authority or any local government body to impose administrative and economic sanctions on it. If a public authority or a local government body adopts an act that does not comply with the law and violates the rights or legitimate interests of a business entity, the latter has the right to appeal to the court to declare such an act invalid (Law of Ukraine, 2003).

At the same time, according to Article 5 of the Code of Administrative Proceedings of Ukraine each person has the right to appeal to the administrative court if he/she considers that a certain decision, action or inaction of a subject of power has violated its rights, freedoms or legitimate interests and he/she has the right to ask for protection of his/her rights by means of: recognition of the respective normative legal act or its separate provisions illegal and invalid; recognition of the respective act or its separate provisions unlawful and their cancellation; recognition of the respective actions performed by the subject of power unlawful and the obligation to refrain from these certain actions; establishing the presence or absence of competence (authority) of the subject of power (Law of Ukraine, 2005).

Conclusion

The conducted research gives an opportunity to formulate the following conclusions and generalizations:

1. Economic security is an integral part of national security of Ukraine, which presents a status of social relations formed concerning production, distribution, exchange and consumption of material goods and services, which characterizes their protectability (security) and resistance to external and internal threats, guarantees protection of national economic interests, promotes implementation of social and economic rights and freedoms of citizens, and in addition to that it creates conditions for further development and growth of the national economy and ensures competitiveness of the state in the world economic environment.
2. Economic security of the state as an object of administrative and legal regulation is a set of relations in the sphere of public administration concerning production, distribution, exchange and consumption of material goods and services; stable and protected status of these relations guarantees protection of national economic interests, promotes social-economic rights and freedoms of citizens and also it creates conditions for further development and growth of the national economy and ensures competitiveness of the state in the world economic environment.
3. In its essence, the administrative and legal regulation of economic security should be considered in two aspects: 1) as a set of administrative and legal norms regulating administrative public relations in the sphere of economic security; 2) as a systemic organizing influence of specially authorized state bodies on economic and social relations through administrative and legal norms and other legal means, primarily of an administrative nature,

with the purpose of their protection, improvement and creation of appropriate conditions for further development in the context of ensuring national security of Ukraine.

4. The main purpose of administrative and legal regulation of economic security of the state is to ensure implementation and protection of economic rights, freedoms and legitimate interests of individuals and legal entities.

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International standards for criminal proceedings in emergency legal regimes

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Abstract

The article aims to study the theoretical and applied aspects of pre-trial research in emergency legal regimes such as: martial law, the state of emergency or the area of joint forces operation in Ukraine. International legal requirements for due process in criminal proceedings during emergency legal regimes are analyzed. It is claimed that the existing experience in Ukraine of normative regulation of criminal proceedings under the conditions of special legal regimes is inefficient, fragmentary, and therefore does not fully correspond to modern ideas about human rights and the democratic and legal state. The perspectives for the application of the jurisprudence of the European Court of Human Rights in criminal proceedings under emergency legal regimes are identified. It was concluded that the investigating authorities carry out all the means to establish the facts of the disappeared persons in the area of Operation of Joint Forces within the framework of the criminal process, which will allow to comply, in theory, with all the requirements for the effectiveness of the investigation. The basis for the formation of legislation on this subject should be the relevant law on missing persons.

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Keywords: extraordinary legal regimes; criminal proceedings; international standards; legal research; special pre-trial instruction.

Estándares internacionales para procesos penales en regímenes legales de emergencia

Resumen

El artículo tiene como objetivo el estudio en profundidad de los aspectos teóricos y aplicados de la investigación previa al juicio en regímenes legales de emergencia como: la ley marcial, el estado de emergencia o el área de la Operación de Fuerzas Conjuntas en Ucrania. Se analizan los requisitos legales internacionales al debido proceso en los procesos penales durante los regímenes legales de emergencia. Se afirma que la experiencia existente en Ucrania de regulación normativa de procesos penales en las condiciones de regímenes legales especiales es ineficiente, fragmentaria, por lo que no corresponde plenamente a las ideas modernas sobre los derechos humanos y el estado democrático y legal. Se identifican las perspectivas de aplicación de la jurisprudencia del Tribunal Europeo de Derechos Humanos en procesos penales bajo regímenes legales de emergencia. Se concluyó que las autoridades de instrucción realizan todos los medios para establecer los hechos de las personas desaparecidas en el área de Operación de Fuerzas Conjuntas en el marco del proceso penal, lo que permitirá cumplir, en teoría, con todos los requisitos para la efectividad de la investigación. La base para la formación de la legislación sobre este tema debe ser la ley pertinente sobre personas desaparecidas.

Palabras clave: regímenes legales extraordinarios; proceso penal; normas internacionales; investigación jurídica; instrucción especial previa al juicio.

Introduction

According to Article 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state (Constitution of Ukraine, 1996).

In addition, Article 2 of the Criminal Procedure Code of Ukraine defines the tasks of criminal proceedings, which are the protection of the individual, society and the state from criminal offenses, protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as prompt, complete and impartial investigation and trial so that anyone who commits a criminal offense is prosecuted to the extent of his guilt, no innocent person has been accused or convicted, no person has been subjected to unreasonable procedural coercion and that every participant in criminal proceedings has been subjected to due process of law and the provision of procedural guarantees. Procedural guarantee is a guarantee of justice (Mykhaylenko, 1996).

The challenges facing Ukraine against the background of negative socio-political events in 2014 have become a serious challenge for many socio-legal institutions, led to an urgent transformation of public policy in the field of improving the legal regulation of crime. Loss of control over certain territories of Ukraine, lack of legitimate law enforcement agencies, disorganization of public relations, mass abuse of the rights of suspects, accused and their deliberate hiding from the authorities in inaccessible territories, absence or ineffectiveness of agreements with some countries on mutual assistance in criminal proceedings offenders, danger to life and health of persons who carried out criminal proceedings or participated in it, a number of other negative factors created atypical conditions in which the current criminal procedural legislation, developed for peacetime, was ineffective to achieve the objectives of criminal proceedings (Kopersak, 2021).

In the conditions of permanent social and economic crisis, increase of unemployment and falling of material level of citizens, impossibility of satisfaction of the basic part of the population of the basic ways legally, continuation of the conflict in the east of Ukraine (illegal distribution of the weapon, ammunition, and explosives) armed conflict and psychological stress), loss of social control and some miscalculations that were made during the reform of the law enforcement and judicial system, led to the fact that in 2018 in Ukraine a special pre-trial investigation was conducted on 32 criminal proceedings, in 2019 only 9, in 2020 on 21 criminal proceedings, in 2021 concerning 34 criminal proceedings for this period 55 criminal proceedings were sent to court with indictments, in which a special pre-trial investigation was carried out. Thus, the above data show that the law enforcement system of Ukraine does not sufficiently use the opportunity provided by the Criminal Procedure Code of Ukraine – to conduct a special pre-trial investigation.

Such a small number of criminal proceedings indicates the presence of significant gaps in the regulation of the procedure of special pre-trial investigation and the lack of practice of its application. In view of the

above, the issues of developing a theoretical basis and improving criminal procedural legislation in terms of its adaptation to international standards of criminal proceedings in emergency legal regimes remain extremely relevant today.

1. Methodology of the study

The methodological basis of this work is is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, and subject of research philosophical methods: dialectical (the basic principles of which are objectivity, comprehensiveness, concreteness, and completeness of knowledge's etc.), logical (the main methods of which are analysis and synthesis, induction and deduction, analogy), etc.

The dialectical method contributed studying the special regime of pre-trial investigation from the standpoint of integrity of this legal phenomenon and the interconnectedness of its individual elements. The comparative legal method is used in the analysis of national and foreign legislation on the regulation of criminal procedure legal relations during the investigation of criminal offenses in special legal regimes. By using hermeneutic method clarified the legal content of the law, identified defects of normative regulation of the special pre-trial regime investigation under martial law.

The operation of the formal method was due to the need to formulate properly conceptual and categorical apparatus of research. Method generalization made it possible to consistently reduce individual facts into one whole and formulate sound conclusions aimed at improvement normative regulation of researched questions. Methods of modeling and abstraction allowed design proposals for amendments to the legislation. These methods applied comprehensively, which allowed to ensure comprehensiveness, completeness, and the objectivity of the study, justify and agree the conclusions formulated in the scientific article, to make sure of their reliability.

2. Analysis of recent research

Various aspects of the selected issues in the criminal process science are the subject of research in the works of scientists of the modern period, among which it is appropriate to note Dei (2017), Kopersak (2021), Pilley (2015), Lazukova (2016), Malanchuk (2017), Pohoretsky (2016), Volkova (2021) and others.

However, there are some issues that need comprehensive analysis and coverage. In particular, the issues of legislative regulation of certain legal relations in the conditions of armed conflict need an additional solution. There is a scientific and applied problem, which is the urgent need for a comprehensive theoretical study of the special regime of pre-trial investigation in the Joint Forces Operation in eastern Ukraine, in developing scientifically sound approaches to its regulatory support and outlining the necessary areas for improvement.

3. Results and discussion

We consider it expedient to begin the analysis of international standards for the conduct of criminal proceedings under emergency legal regimes by clarifying the prospects for the application of the case law of the European Court of Human Rights in such criminal proceedings.

According to the analysis of the case law of the European Court of Human Rights, the positive obligation of the state to conduct an effective pre-trial investigation exists even in an emergency, including in difficult and dangerous conditions, including the conditions of military conflict (Lazukova, 2016).

The Court has repeatedly stated that the investigation of terrorist crimes, in particular, undoubtedly poses particular problems for the authorities, but this does not mean that such a situation gives the investigating authorities, so to speak, cart blanche (A. and Others v. the United Kingdom, 2009). Thus, in Halki v. Turkey, the Court did not satisfy the Government's argument that the bringing of witnesses to court could have been due to some difficulties due to the general situation in the region (Turkish part of Kurdistan). The European Court of Human Rights noted that these circumstances should not have made it impossible to interrogate individuals in court, and that transport difficulties and even general safety considerations were not taken as a serious argument to rehabilitate a witness's failure to appear in court.

In another case, Jalud v. The Netherlands, the Court found that the investigation was characterized by significant shortcomings that made it ineffective (in particular, records of key witness statements were not provided to the judiciary; where the victim was, etc.). The court found that the Dutch military and investigators, although recruited in a foreign country after the end of hostilities, nevertheless worked in difficult conditions, but did not take the latter into account and stated that these shortcomings in the investigation had seriously compromised its effectiveness.

In the judgment of the European Court of Human Rights in the cases of Haralambu and Others v. Turkey and Emin and Others v. Cyprus

(concerning the complaint concerning the lack of an effective investigation during the Turkish invasion in 1974) The court found that the Turkish and Cypriot governments under Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms were obliged to investigate the bodies of missing persons who showed signs of violent death, but it was premature to find the death investigation ineffective (the bodies of the applicants' relatives were found by the United Nations Committee program). The fact that no concrete progress has been made does not in itself indicate a lack of goodwill on the part of the authorities.

At present, there are no clearly defined legal approaches to involving international organizations and individual countries to facilitate conflict resolution. At the same time, it should be noted that given the situation in eastern Ukraine and aware of the growing number of conflicts around the world, representatives of national human rights institutions of 20 countries adopted the Kyiv Declaration on October 22, 2015 «The role of national human rights institutions». This document is the first and only international human rights instrument that guides the actions of national human rights institutions in conflict and post-conflict situations (Dei, 2017).

In particular, if the national authorities are unable to restore the violated rights, the Kyiv Declaration outlines the cases in which measures can be taken in the event of impossibility to resolve disputes in court and within the framework of political agreements. An example is a situation where, at the time of the conflict, a person in custody was in a territory not controlled by the government and the criminal proceedings against that person remained in the controlled area or vice versa.

One of the main international legal requirements for a proper form of pre-trial investigation is the obligation of the state, even in an emergency, to ensure effective forms of judicial review. The right of access to court, enshrined in Part 1 of Art. 6 of the Convention, is not absolute, and in cases established by law, it may be limited (Tsesar and Others v. Ukraine, 2018). However, the European Court of Human Rights notes that the right of access to a court should not be restricted in such a way that the very essence of this right is nullified.

In Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that no one shall be deprived of his liberty save in the cases expressly provided for in this Article and in accordance with the procedure established by law. Subparagraph «c» of paragraph 1 of this article provides for the possibility of lawful arrest or detention of a person committed to bring him to the competent judicial authority in the presence of reasonable suspicion of committing an offense or if it is reasonably necessary to prevent him from committing an offense or fleeing after it.

Everyone who is arrested or detained in accordance with the provisions of subparagraph «c» of paragraph 1 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, must immediately appear before a judge or other official empowered by law to exercise judicial power and be provided with a court hearing within a reasonable time or dismissal during the proceedings.

Thus, the Government of Turkey on July 23, 2016, issues a decree № 667, Art. 6 (1 (a)) on the possibility of detaining suspects for up to thirty days without trial. In Spain, special anti-terrorist measures are defined in Art. 55 (2) of the Spanish Constitution, 97 which provides for an extended period of detention for a suspect before he appears before a judge, as well as the possibility of detaining a detainee with limited communication with the outside world. In Thailand, Decree 3/2015 of the head of the National Council for Security and Peace allows arbitrary detention for up to seven days without contact with the outside world and without notification of suspicion (Human Rights Around the World, 2017).

As part of the fight against terrorism, the Malaysian parliament passed a law in April 2015 authorizing the detention of terrorism suspects without trial for up to 60 days by a decision of the Counter-Terrorism Committee and a ban on reviewing such decisions by the court. decision to extend the arrest for two years or more if necessary. The decision on dismissal is also made by this body. As for the legal position of the European Court of Human Rights on this issue, for example, in the case of Aksoy v. Turkey, it was emphasized that the difficulties of investigating terrorist acts could not justify the detention of a suspect for 14 days without judicial review.

The European Court of Human Rights has taken into account "the undoubtedly serious problem of terrorism in south-eastern Turkey and the difficulties faced by the state in taking effective measures to combat it." (Aksoy v. Turkey, 1996). At the same time, he was not persuaded that an emergency required the applicant to be detained on suspicion of involvement in terrorist offenses for 14 or more days incommunicado without being brought before a judge or other judicial official power (Aksoy v. Turkey, 1996). The court noted that the complexity of the investigation of terrorist acts could not give freedom to the actions of the pre-trial investigation body to detain suspects without any intervention of the courts, because judicial control is an important element of the guarantee designed to minimize the risk of arbitrariness and rule of law (Dikme v. Turquie, 2000).

In the case of Castillo Petruzzi and others, the detainees were taken only 36 days later, which was found by the Inter-American Court of Human Rights to be a violation of Article 5 § 1.7 of the American Convention on Human Rights (Castillo Petruzzi *et al.* v. Peru, 1999). In Browgan and Others v. The United Kingdom, the Court noted that the applicant's detention in police custody was 4 days and six hours beyond the strictly established

time limits of Art. 5§3. The question of the proportionality of the length of detention and the right to liberty and security of person guaranteed by Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the right to a fair trial, guaranteed by Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, has been the subject of proceedings by the European Court of Human Rights in several other cases.

This allows us to emphasize that the limits of flexibility in the interpretation and application of the concept of "immediacy" are limited and depend on the specifics of the particular case and the situation in which the detention took place. In particular, the United Nations Human Rights Committee stated in a general comment № 8 that "the delay should not exceed a few days"(UN COMMITTEE, 1982).

In turn, the European Court of Human Rights points out that in the case of long-term detention (in Demir and Others v. Turkey 16 days and 23 days) a general reference to the difficulties associated with terrorism is insufficient. It is necessary to indicate, for example, for what reasons and the specific circumstances of the case which gave rise to them, the judicial control over the applicants' detention was jeopardized during the investigation (Affaire Demir et gül c. Turquie, 2001).

In the context of terrorist activities in Northern Ireland, detention for up to seven days without any form of judicial control complied with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (provided for in Article 12 of the Prevention of Terrorism Act 1984) (Brannigan and McBride v. the United Kingdom, 1993). The European Court of Human Rights did not find a violation of the requirement of urgency, given that the detainee was given the opportunity to consult a lawyer, contact relatives and undergo a medical examination (Brannigan and McBride v. the United Kingdom, 1993). Thus, the court proceeds from the factual circumstances of the case, but at the national level special guarantees must be established that would supplement the temporary absence of judicial control and, in particular, ensure: 1) the right to defense; 2) the right to notify relatives or friends of their detention; 3) the right to access a doctor, etc.

One of the most serious threats to human rights, which is most pronounced during emergencies, is the increased risk of torture and ill-treatment. Paragraph 2 of Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that the prohibition of torture is absolute and does not allow for derogations. It is emphasized that no exceptional circumstances, whatever they may be, a state of war or a threat of war, internal political instability or any other state of emergency, can justify torture.

The European Court of Human Rights notes that the undeniable complexity of the fight against terrorism cannot lead to restrictions on guarantees of the physical integrity of the individual (Tomasi v. France, 1992). At the same time, despite the absolute nature of this right in many countries of the world, unfortunately, there are many cases of such violations: «Palestinian suspension» is used - hanging naked with hands tied behind his back (the case of «Aksoy v. Turkey»); «Intensive interrogation techniques», methods of psychological influence, coercion to stand by a wall, noise exposure, sleep deprivation, food and water are used (see, for example, Ireland v. the United Kingdom, 1978); electric shocks, prolonged hanging by the wrists and ankles, threats to detainees and their relatives, etc.

It should be noted that despite the obvious gross violation of convention rights in foreign literature, there is a position according to which the state's criminal policy to combat terrorist crimes may contain deviations from the general standards of proof (Butaev, 2015).

It is important to note that in many countries of the world there are (or have been) provisions that in some way limit both the guarantees of confidential communication with a lawyer and certain aspects of the right to defense in general. At the same time, the case law of the United Nations Human Rights Committee and the Inter-American Court of Human Rights stipulates that the suspension of habeas corpus cannot be justified under any circumstances, given the fundamental nature of this guarantee in a democratic society (Habeas Corpus In Emergency Situations, 1987).

Of interest in this context is the Advisory Opinion of the Inter-American Court of Human Rights (1987) «Habeas Corpus in Emergencies», which states that habeas corpus and amparo are among the remedies that are fundamental to the protection of various rights. , deviation from which is unacceptable (Habeas Corpus In Emergency Situations, 1987).

The obligation of states to «ensure the confidentiality of communication between a suspect or accused person and a lawyer» is also set out in Directive 2013/48 / EC of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal and European proceedings. arrest warrant, as well as the right to inform third parties about their imprisonment, to communicate with third parties and the consulate during imprisonment»(DIRECTIVE 2013/48/EU, 2013).

Despite the pressure exerted by some countries in the process of drafting this Directive in order to consolidate the possibility of a certain derogation, in particular in cases of terrorism, R. Pillay emphasizes that such a right is not subject to any restriction or derogation (Pilley, 2015); such absolute protection reflects the provisions of the United Nations Basic Principles on the Role of Lawyers (para. 8) and the standards of the Committee against Torture (European Committee For The Prevention Of Torture, 2002).

At the same time, an analysis of the provisions of the Directive shows that the latter still provides for certain exceptions in some cases. In particular, in the case of geographical distance of the suspect or accused, which makes it impossible to exercise the right of access to a lawyer immediately after imprisonment.

This circumstance allows a certain temporary deviation from the right of the suspect or accused to immediate access to a lawyer (Article 3.5). Thus, in Salduz v. Turkey, the European Court of Human Rights stated that, in order to ensure sufficient "practicality and effectiveness" of the right to a fair trial guaranteed by Article 6 § 1, access to a lawyer must be granted, interrogation of the suspect, except in cases when in the specific circumstances of the case it is demonstrated that there are good grounds for restricting such a right.

Another possibility to derogate from the immediate right to a lawyer is provided for in paragraph 3.6 of the Directive. In particular, such a derogation may be considered lawful if justified by the particular circumstances of the case for one of the following good reasons: (a) if there is an urgent need to prevent serious adverse consequences for the life, liberty or physical integrity of the person; (b) if urgent action by the investigating authorities is strictly necessary to prevent a significant danger.

An example of the application of this derogation is illustrated in the decision of the European Court of Human Rights «Ibrahim and others v. The United Kingdom» of 13.09.2016, where the so-called «Security interrogations» of persons suspected of terrorism (according to the Terrorism Act of 2000, this type of interrogation is conducted without the presence of a lawyer and before the detainee can exercise the right to legal aid). In its judgment, the Court stated that at the time of the applicants' detention and interrogation there was a serious threat to public safety, which was certainly an extraordinary circumstance allowing a waiver of the general guarantees of the Convention under Article 15 and the use in the process of written testimony taken without the presence of counsel.

Thus, the European Court of Human Rights did not find a violation of Article 6 of the Convention in the case. Further analysis of the provisions of the Directive in the light of the case law of the European Court of Human Rights suggests that the former sets higher standards than the case law of the European Court of Human Rights, which in exceptional cases, given the factual circumstances of the case, allows wider restrictions. In particular, the Code of Criminal Procedure of the Federal Republic of Germany provides for the possibility for a judge to review correspondence between a lawyer and an accused if the latter is accused of belonging to a terrorist organization (paragraph 2 (148) of the Code of Criminal Procedure of the Federal Republic of Germany).

At the same time, the law establishes certain guarantees for such interference in confidential communication. In particular, only the judge of the district where the remand center is located has the right to examine the materials submitted during the conversation between the defense counsel and his client; however, this judge has no right to disclose the details of the studied materials and correspondence, unless they contain information about serious offenses under paragraphs 1 and 2 of Art. 138 of the Criminal Code of the Federal Republic of Germany (Savchenko, 2017).

The question of the legality of monitoring the correspondence of a terrorist suspect with a lawyer in the Federal Republic of Germany was the subject of the European Court of Human Rights in 2001 in Erdem v. Germany, in which the court concluded that such interference did not violate Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as the basis for such interference was the provisions of national law.

However, the European Court of Human Rights noted that this is a limited control, as the accused is free to communicate orally with his lawyer. The Court also noted that such measures were provided for in a very narrow area (the fight against terrorism) and were an exception to the general rule that all contacts between the applicant and his lawyer were confidential.

Moreover, the documents exchanged between the lawyer and his client were read by an independent judge, whose duty was not to disclose the information received to the investigating authorities, unless it contained signs of a new corpus delicti. At the same time, the European Court of Human Rights stressed the need to maintain confidentiality and explained that the provisions of Art. 138 should be used only in exceptional situations. Thus, in that judgment, the Court essentially gave priority in the regulation of legal secrecy to the rules of national law over international law (Pohoretsky and Pohoretsky, 2016).

At the same time, in the case of Petra v. Romania, the automatic monitoring of all prisoners' correspondence (not only with a lawyer but also with relatives) was found to be inconsistent with the Convention. Interestingly, the reasons for the domestic decisions in this case were quite convincing, and, moreover, the measure was limited in time and even the applicant was officially notified of the perlustration.

However, the Court found a violation of Art. 8 of the Convention. On the one hand, he acknowledged that the actions of the prison authorities had a legal basis, while the European Court of Human Rights focused on such an issue as the «quality of the law» applied in this case. Italian law did not specify the grounds on which a judge may allow a perlustration and for how long. Thus, the judge's discretion in these matters remained unacceptably wide, and the law was too vague.

However, the Court noted that the law could not describe in detail each case in which perlustration was allowed - such a requirement would be unfeasible, but the law should establish at least some framework that limits the discretion of internal authorities in resolving this issue. Note that at the national level, such rules are quite common. In particular, in cases concerning the confidentiality of correspondence between the accused and his lawyer, it is necessary to cite as an example the case of Calogero Diana v. Italy, which concerned a terrorist, a member of the Italian Red Brigade.

His correspondence with a lawyer was monitored by the prison administration. Italian law allowed a judge's reasoned decision on certain categories of prisoners. In view of this, we can mention the Law of the Republic of Kazakhstan of 5.12.1997 № 195 «On Advocacy», according to Part 4 of Art. 18 of which the provision of information to the authorized body for financial monitoring is not a disclosure of legal secrecy.

The possibility of short-term restriction of the detainee's communication with the defense counsel is provided for in the Code of Principles for the Protection of All Persons Subject to Detention or Arrest. Thus, Principle 16 of the Code states: «Notwithstanding the exceptions contained in paragraph 4 of principle 16 and paragraph 3 of principle 18, a detainee may be refused in connection with the outside world, and in particular his family or lawyer, during period not exceeding several days». Part 4 of Principle 16 states: «Any notification referred to in this principle (notification of detention) must be sent or addressed by the competent authority without delay. The competent authority may defer notification for a reasonable period if the exceptional circumstances of the investigation so require» (Human Rights: A Collection Of International Treaties, 1995).

In view of the above, it can be concluded that the national criminal procedure law establishes higher guarantees. Thus, the defense counsel has the right to participate in interrogation and other proceedings conducted with the participation of the suspect, accused, before the first interrogation of the suspect to have a confidential meeting with him without the permission of the investigator, prosecutor, court, and after the first interrogation - the same meetings without restriction. quantity and duration.

There is only one restriction on confidentiality during the interrogation of a suspect, accused and defense counsel: according to Part 5 of Art. 46 of the Criminal Procedure Code of Ukraine «such meetings may take place under the visual control of an authorized official, but in conditions that exclude the possibility of eavesdropping and eavesdropping».

It should be emphasized that the above list of conditional blocks of international minimum requirements for due process in an emergency is, of course, not exhaustive and may become a promising area for further research. Expansion and deepening of the latter is also possible through the emergence of clearer international «patterns».

In particular, an important step in this direction was taken by the European Commission «For Democracy through Law» at the 106th plenary session, at which a checklist of questions to states was developed and published to assess the rule of law in emergencies (Recommendations For The Unification And Harmonization Of The National Legislation Of The Cis Member States In The Field Of Combating Terrorism, 2006).

That is, we can talk about the beginning of a new stage of standardization of relations in this area. However, with the further development of international law in this context, the number and content of rights that cannot be restricted during an emergency may change. This will be affected by both the increase in the practice of international judicial and quasi-judicial human rights bodies and the change in the approaches of states themselves to regulating the possibility of restricting human rights at the national level (in particular, states may establish higher human rights guarantees).

The importance of the issue under consideration requires its further doctrinal elaboration and close attention of legal researchers. We therefore believe that a working group should be set up under the auspices of the United Nations to define the minimum requirements to ensure proper legal procedure in an emergency.

It should be noted that there is some positive experience in the world in a somewhat similar direction (in the development of standards for education in emergencies in 2003; works) (Minimum Education Standards For Emergencies, Chronic Crises And Early Recovery, 2006). The work of such a group may result in the development and adoption of a special international convention on human rights in an emergency, based on the provisions of the Declaration on Minimum Humanitarian Standards, which will set out basic general principles and maximum human rights restrictions.

In the context of criminal procedure, it is necessary to introduce such a paradigm of dealing with the negative consequences of emergencies, such universal requirements, which are based on the values of due process of peacetime and most fully ensure the rights and interests of individuals. (In the criminal justice system) (Resolution of The Verkhovna Rada Of Ukraine, 2015).

The next part of our study will be devoted to the study of the peculiarities of legal regulation and procedural order of pre-trial investigation of criminal proceedings in emergency legal regimes in modern Ukraine. After all, as practice shows, certain provisions of national law, investigative and judicial practice do not always meet the requirements of such special procedures of criminal proceedings by the international community.

Today, the pre-trial investigation of criminal offenses committed on the territory of Ukraine both in the area of the Joint Forces Operation and in the territory of the Autonomous Republic of Crimea does not always meet the criteria of effectiveness. Of course, its efficiency and quality are affected by the real extraordinary situation, which, of course, makes its adjustments in the work of pre-trial investigation bodies.

However, this fact is often manipulated, justifying inaction by the difficult situation in the region. The marker in this case is the absence of the investigation process itself, the necessary efforts of the investigator to conduct proper proceedings, etc. (as evidenced by criminal proceedings, in which the vast majority of procedural documents are purely organizational, such as to conduct investigative actions, etc.). The inability to establish the facts and the ineffectiveness of the investigative (investigative) actions are explained by the investigators of the Joint Forces Operation and the «impossibility of access to the territory».

It should be emphasized that the temporary occupation of the Autonomous Republic of Crimea and the uncontrollability of certain territories of Donetsk and Luhansk oblasts do not mean that Ukraine «automatically» bears no responsibility for human rights violations in these territories. Although the Resolution of the Verkhovna Rada of Ukraine adopted the Statement of the Verkhovna Rada of Ukraine "On Derogation from Certain Obligations Defined by the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms", it does not release the state from its responsibilities. obligations.

These territories continue to be considered as part of Ukraine and, therefore, they continue to be subject to state jurisdiction. At the same time, Ukraine cannot be held responsible for the actions of the occupying authorities of another state or separatist regimes sponsored by another state, if it is objectively impossible to restore control over the territories. The government, by applying special rules to the conflict zone, weakens the guarantees of human rights protection by deviating from certain obligations.

According to the logic of the Statement, the deviation from certain obligations under these international agreements applies to the area of the long-term Joint Forces Operation, while "full responsibility for human rights and implementation of relevant international agreements in Ukraine, which is temporarily not controlled by the Ukrainian authorities, the state exercising effective control over these territories"(see paragraphs 1, 2 of the Statement) (Resolution Of The Verkhovna Rada Of Ukraine, 2015).

In the event of a temporary loss of state control over part of its territory, positive obligations remain, which require all available diplomatic, economic, judicial / legal and other measures to restore lost control and

continue to guarantee fundamental rights and freedoms, the main The Court is not the result achieved, but the desire of the state to achieve it, which is generally inherent in positive obligations.

In criminal proceedings against persons subject to a special pre-trial investigation, one of the procedural guarantees is the participation of counsel. The right to protection of a suspect is a set of powers granted to him by law in order to refute the suspicion, mitigate punishment, as well as protect their personal interests (Malanchuk, 2017).

In case of intentional concealment of a suspect, investigators are forced to submit a request for detention by analogy with a notice of suspicion. Thus, in practice, a request for detention is sent by the last known place of residence of the suspect by registered mail, published on the official website of the designated authority and in the official publication of the designated authority. The study found that the opinions of judges who grant or deny a request for detention in such conditions were proportionally divided.

Those judges who grant a request for detention in the absence of a suspect or accused shall initiate a special pre-trial investigation procedure (in absentia). That is, the suspect has already decided to hide and is actively implementing it, his whereabouts are unknown to law enforcement agencies, and the decision to arrest the suspect has not been executed due to his absence, permission to detain the suspect does not work. But Part 1 of Art. 193 of the Criminal Procedure Code of Ukraine provides that consideration of the petition for application of a precautionary measure is carried out with participation of the prosecutor, the suspect, the accused, his defender, except for the cases provided by h. 6 Art. 193 of the Criminal Procedure Code of Ukraine, and in Part 6 of Art. 193 of the Criminal Procedure Code of Ukraine there is a requirement to declare the suspect internationally wanted.

In order to declare a suspect internationally wanted, a decision must be made to choose a measure of restraint in the form of detention of the same suspect. That is, there is a conflict between the norms of the Criminal Procedure Code of Ukraine and international acts of the Interpol institution.

The lack of a coordinated position of the courts on the criteria of sufficiency of such evidence, the relevant investigative, prosecutorial and judicial practice indicate the application by analogy of the provisions of Art. 297-5 of the Criminal Procedure Code of Ukraine on the procedure for serving procedural documents on the suspect, including summonses, notices of suspicion, when the investigator or prosecutor establishes the need for further application of the rules of the special pre-trial investigation «in absentia» before the official decision on its implementation, ie except sending at the last known place of residence or stay of the suspect by publication in the mass media of the national sphere of distribution and on

the official websites of the pre-trial investigation bodies (During Criminal Proceedings Under The Procedure «In Absentia»On One Scale - The Interests Of Ensuring The Effectiveness Of The Proceedings, And On The Other – The Right Of A Person To A Fair Trial, 2018).

There is a scientific opinion among procedural scholars that during a special pre-trial investigation the defense counsel may be questioned instead of his client, and his testimony may be used as evidence as well as the testimony of the accused (During Criminal Proceedings Under The Procedure «In Absentia»On One Scale – The Interests Of Ensuring The Effectiveness Of The Proceedings, And On The Other - The Right Of A Person To A Fair Trial, 2018).

G.P. Vlasova believes that this position is difficult to agree with, as it contradicts the role of the lawyer, the legal regulation of the lawyer and the traditions that have developed over the centuries (Vlasova, 2014). And we are ready to fully agree with the scientist. Therefore, it is impossible to interrogate the defense counsel instead of the suspect, as such evidence does not have factual data on the circumstances of the criminal offense, the defense counsel did not commit such a criminal offense and did not witness the commission of such a criminal offense or from free primary legal aid.

Thus, a special pre-trial investigation in criminal proceedings is a consequence of the suspect's choice of his line of defense in the form of hiding from law enforcement, so communication of such a suspect with his lawyer is impossible for objective reasons, and in case of change of conduct of the suspect law and order, the court, the suspect will fully use the right to defense, communication with a lawyer, the choice of a lawyer and will enjoy all the rights defined in the Criminal Procedure Code of Ukraine.

One of the urgent problems is the inadequate pre-trial investigation of missing persons. On 5 June 2015, the Parliamentary Assembly of the Council of Europe adopted Resolution 2067 (2015) "Missing persons during the conflict in Ukraine", in which it expressed serious concern about the growing number of cases of missing persons (Resolution Parliamentary Assembly, 2015). Deep concern over the fate of missing persons in Ukraine is reflected in numerous reports from international organizations (Volkova, 2016). Thus, in the 13th Report of the Office of the United Nations High Commissioner for Human Rights for the period from November 16, 2015 to February 15, 2016, a separate section is devoted to the above issue (Report Of The United Nations High Commissioner For Human Rights On The Human Rights Situation In Ukraine, 2016).

According to the Report, the search for missing persons requires close coordination between the relevant government bodies, including the Ministry of the Interior, the Security Service and the Ministry of Defense, as well as a special mechanism for obtaining applications from relatives of missing persons in the Joint Forces Operation area.

According to statistics, in the first year since the beginning of Operation Allied Forces, almost 4,000 missing people have been registered (information from the Ministry of Internal Affairs, which was released in November 2015).

At the beginning of the pre-trial investigation into the disappearance of a person, the practice is faced with the problem of uncertainty of circumstances that may indicate the commission of a criminal offense. Usually, the relevant statement or notification contains only information about the missing person, without specifying the circumstances of their disappearance.

In departmental regulations, the Ministry of Internal Affairs of Ukraine applied a special approach to the implementation of the provisions of Art. 214 of the Criminal Procedure Code of Ukraine, the duty of the investigator to enter the relevant information in the Unified Register of pre-trial investigations and to initiate an investigation.

According to paragraphs. 9.4.2 of the order of the Ministry of Internal Affairs of Ukraine dated August 14, 2012 № 700 «On the organization of interaction of pre-trial investigation bodies with other bodies and units of internal affairs in the prevention, detection and investigation of criminal offenses» the head of the investigative unit within 24 hours, as well as in case of disappearance of an adult in circumstances indicating the possibility of committing a criminal offense against him, provides mandatory entry in the Unified Register of pre-trial investigations information about the specified criminal offense and its preliminary qualification as premeditated murder (Article 115 of the Criminal Code) and takes all measures provided by the Criminal Procedure Code of Ukraine for a comprehensive, complete and impartial investigation of the circumstances of criminal proceedings.

In accordance with paragraph 6 of ch. 2 of Section II of the Regulations on the Procedure for Maintaining the Unified Register of Pre-trial Investigations, simultaneously with the determination of the preliminary legal qualification, this application shall be entered into the Unified Register of Pre-trial Investigations with an additional mark «disappearance» (Regulations On The Unified Register Of Pre-Trial Investigations, The Procedure For Its Formation And Maintenance, 2020).

However, the analysis of law enforcement practice shows that a missing person in the event of their death is considered found if the identification procedure will establish that the physical or biological characteristics of the body of the deceased correspond to the characteristics of the missing person.

In fact, it turns out that there is the body of the deceased, the expert's conclusion confirms the coincidence of DNA and life-threatening circumstances that caused the death. Investigators do not see the events of

the criminal offense in the intentional deprivation of human life and close the criminal proceedings on the death of a person in case of confirmation of the coincidence of DNA profiles under paragraph 1, part 1 of Art. 284 of the Criminal Procedure Code of Ukraine. Within the criminal proceedings, the circumstances of the person's death are not established.

The provisions of Part 1 of Art. 91 of the Criminal Procedure Code of Ukraine, which provides that in criminal proceedings the event of a criminal offense is subject to proof (time, place, manner and other circumstances of the criminal offense). The inability to establish the facts and the ineffectiveness of the investigative actions are explained by the anti-terrorist operation and the «impossibility of access to the territory».

Meanwhile, every family has the right to know the fate of their relative, and the exercise of this right is the duty of the state, in particular, in light of the recently ratified by Ukraine International Convention for the Protection of All Persons from Enforced Disappearance (June 2015) (International Convention On The Seizure Of People From Violent Events, 2006). That is why the pre-trial investigation authorities should use all means to establish the facts of missing persons in the area of the Joint Forces Operation within the framework of criminal proceedings. This is the only way to meet the requirements for the effectiveness of the investigation (Resolution Parliamentary Assembly, 2015).

We will note that in this direction certain work is conducted (Draft Law On The Legal Status Of Missing Persons, 2016). The basis for the formation of national legislation on this issue should be the Model Law on Missing Persons (Model Law On Missing Persons, 2008).

Conclusions

The study of international legal requirements for the proper legal procedure of pre-trial investigation in criminal proceedings under emergency legal regimes allows us to formulate the following conclusions.

Ensuring human rights in national criminal proceedings in a state of war, emergency or in the area of the Joint Forces Operation in eastern Ukraine is an important vector of scientific development, as it should be based on a reasonable balance of interests of society and the state. and effective human rights in the context of the demands of the world community.

Analysis of the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights (Axoi v. Turkey, Cyprus v. Turkey, Erdem v. Germany, Liu and Liu v. Russia, Tomazi v. France, Ibrahim et al. v. the United Kingdom, Peter v. Romania,

etc.) suggests that the State's positive obligation to carry out an effective pre-trial investigation of each criminal offense exists even in complex and dangerous situations, including a state of emergency or military conflict.

The realization of the right of relatives of the missing is a duty of the state, in particular, in the light of the recently ratified by Ukraine International Convention for the Protection of All Persons from Enforced Disappearance. This actualizes the use of pre-trial investigation bodies of all means to establish the facts of missing persons / deaths in the area of the Joint Forces Operation within the criminal proceedings, which will allow to comply with all requirements for the effectiveness of the investigation. The basis for the formation of national legislation on this issue should be the relevant law on missing persons.

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International Cooperation in Investigating Economic Crimes of Transnational Nature

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Abstract

The purpose of the research is to highlight international cooperation in investigation of economic crimes of a transnational nature. The main content. *It is emphasized that the concept of "international cooperation in fight against crimes" is in the sphere of action of various legal systems of both international public law and domestic law of states (countries) taking part in cooperation.". It is established that it is necessary to clearly delineate the subject of international legal regulation of this type of interaction between states and international organizations.* Methodology. Review of materials and methods based on analyzing documentary materials of international cooperation in investigating economic crimes of transnational nature. Conclusions. Due to objective reasons and circumstances modern international relations are characterized by expansion of legal cooperation in investigating economic crimes of transnational nature. At the same time, certain entities can be clearly distinguished in the circle of participants of such cooperation. Considering their goals of creation, their range of powers and features of their implementation such entities operate only in the fight against crimes at the international level - these are international law enforcement organizations.

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Cooperación Internacional en la Investigación de Delitos Económicos de Carácter Transnacional

Resumen

El propósito del artículo es resaltar la cooperación internacional en la investigación de delitos económicos de carácter transnacional. El su contenido principal se destaca que el concepto de "cooperación internacional en la lucha contra los delitos" se encuentra en el ámbito de acción de diversos ordenamientos jurídicos, tanto de derecho internacional público como de derecho interno de los estados (países) que participan en la cooperación. Se establece que es necesario delimitar claramente el objeto de regulación jurídica internacional de este tipo de interacción entre Estados y organismos internacionales. Se efectuó una revisión de materiales y métodos a partir del análisis de textos documentales de cooperación internacional en la investigación de delitos económicos de carácter transnacional. Se concluye que, por razones y circunstancias objetivas, las relaciones internacionales modernas se caracterizan por la expansión de la cooperación judicial en la investigación de delitos económicos de carácter transnacional. Al mismo tiempo, ciertas entidades pueden distinguirse claramente en el círculo de participantes de dicha cooperación. Teniendo en cuenta sus objetivos de creación, su gama de poderes y características de su implementación, tales entidades operan solo en la lucha contra los delitos a nivel internacional: estas son organizaciones internacionales de aplicación de la ley.

Palabras clave: delitos económicos; cooperación jurídica internacional; lucha contra los delitos transnacionales; prevención y represión de delitos; aplicación de la ley.

Introduction

All civilized countries are trying to coordinate their actions in fight against crimes; it is performed by means of concluding agreements on various areas of international cooperation aimed at counteraction to crimes. At present, the level of crimes in the world remains in the field of view of the international community, especially given its transnational character, recognition of international crimes as acts of international

danger, globalization and blurring of borders for economic relations, spread of Internet technologies etc. All this leads to the joint efforts of states and their authorized bodies, whose activities are aimed at counteraction to crimes and criminal prosecution of international crimes and crimes of an international nature, as well as at formation of appropriate legal regulations of substantive rules of international criminal law and other branches of international public law of legal cycle as well as norms of international law aimed at regulating the process of cooperation between states on counteracting to cross-border crimes, as well as national legislation of the Member States (legislation of criminal and criminal procedural nature).

Ukraine is an active member of international cooperation aimed at establishing peace, human rights and freedoms and counteracting crimes and it is a participant of many international legal agreements. Accordingly, Ukraine is in line with its commitments in the sphere of counteraction to crimes in general by means of introducing provisions of international agreements into the national legislation, as well by means as cooperating with other states in this area. Effectiveness of implementation of commitments depends on the state of national legislation governing implementation of authorized bodies' powers in the sphere of international cooperation, the mechanism of their cooperation, real steps at the international level in cooperation with international law subjects, as well as bilaterally - in interaction with other states (countries), represented by the authorized bodies of these states, during implementation of joint measures aimed at counteracting crimes and other forms of combating crimes.

To the institute of international cooperation in combating crimes is also conditioned by intensified activities of the International Criminal Court due to improved legal framework of its activities and law enforcement practices, developed forms of cooperation within international organizations aimed at counteracting and combating crimes. Attention to international cooperation in combating crimes is also conditioned by improving domestic criminal legislation of countries of the world, legislation on operational and investigative and penitentiary activities, as well as by borrowing the best practices. In particular, provisions of Chapter IX of the CPC of Ukraine and other laws form legal rules and standards which are united in the domestic legal institute of international cooperation in criminal proceedings, due to Ukraine's participation in international cooperation at the universal and regional levels, as well as due to integration into the European community, active cooperation with the states at the bilateral level, intensified activities of the authorized bodies aimed at international cooperation of Ukraine in the sphere of fight against crimes according to the powers assigned to these authorized bodies.

1. Literature review

Most researchers of cooperation in counteracting crimes perceive international law as a broad legal phenomenon, including international cooperation in combating crimes and consider a set of international law standards governing interaction of states in this sphere as a complex combination of legal rules based on the standards of international criminal law.

In the science of international law, international cooperation in fight against (combating) crimes means cooperation of various states in fight against criminal acts causing public danger that requires combined efforts of several states (Batsanov, 1986).

The concept of international cooperation "reflects a process of interaction between international actors with dominating common search for opportunities for implementation of interests of all interested parties. Cooperation is based on trust in relations between partners" (Kryvonos, 2012).

When carrying out analysis of international cooperation, Proskurin proposed to define it as "direction and developmental level of the system of international relations characterized by regular purposeful development of international relations coordinated by participants themselves and taking place in various spheres and branches of international life" (Semigina, 2000: 89).

When analyzing international cooperation in the sphere of law enforcement as one of the areas of international cooperation in the fight against crimes

S.M. Perepelkin proposed the following definition: "International cooperation in the sphere of law enforcement is one of the types of joint activities of states aimed at harmonization of their interests and achievement of common goals in solving issues of law enforcement on the basis of generally accepted principles and norms of international law" (Perepelkin, 2018: 31). According to the scientist international cooperation in the sphere of law enforcement is aimed at the regulation and development of various types of international relations, usually on issues which determine security both within a certain geographical region and around the world (for example, development of uniform standards of international law enforcement cooperation, Organization and holding of seminars and training sessions), as well as at provision of own internal interests and security (and this is the primary thing) (Perepelkin, 2018), and therefore international cooperation in the sphere of law enforcement can be considered as one of the directions of international cooperation in fight against crimes.

Thus, the subject of regulation of the set of norms and principles of international law governing international cooperation in combating crimes

as part of the subject of international public law, is much broader than the subject of regulation of international criminal law and, in our opinion, it includes norms and principles of international law all branches of the criminal law cycle.

Recently, an increasing number of researchers emphasize that the legal regulation of international cooperation is carried out not only through norms of international law, but also through norms of domestic law. Several scientists emphasizes polysystemic nature of legal regulation of cooperation between states in the sphere of counteraction to crimes. So, A.V. Pidgorodinskaya draws attention to the fact that the phrase international cooperation in fight against crimes indicates the fact of formation of this institute based on the provisions of international and national law, or more precisely - on the collision of the two legal systems (Pidgorodinskaya, 2015).

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of international cooperation in investigating economic crimes of transnational nature. The formal-dogmatic method contributed to development of the author's explanation of the current state, problems, and practical role of legal technologies for further development and improvement of international cooperation when investigating economic crimes of transnational nature. The officially legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of international cooperation when investigating economic crimes of transnational nature.

3. Results and discussion

According to O. Ivanchenko, the science of international public law actually recognizes that dynamics of the ratio of norms of international and national law indicates expansion of the sphere of international law regulation, primarily by means of attraction to its orbit of new directionsattracting new areas related to international cooperation in addition, the scope of the so-called joint regulation of public relations by norms of international and national law is expanding (Ivanchenko, 2013).

A. G. Volevodz noted quite aptly that the concept of international cooperation in fight against crimes arose at the junction of several legal systems, namely international law and domestic law, as well as several sciences - international, criminal and criminal procedural law, and that it

still retains its special status, which leads to the fact that each of the "parent" disciplines is willing to include its individual elements as part of it, without recognizing its independence and never considering and researching these legal phenomena systematically and in in full.

A.G. Volevodz notes that independent legal institutions of various forms of international cooperation in fight against crimes which were previously traditionally regulated mainly by international law, are now characterized by the polysystemic nature of legal regulation on the part of different legal systems of the participating states (Volevodz, 2007). This brings us back to the early 20th century, when there were many supporters of characterization of international criminal law as a set of domestic criminal laws, which extended beyond the territory of the state (presence of a foreign element) (Volevodz, 2007).

International cooperation can and should take place at all levels of the criminal prosecution system involving more than one State, in accordance with their obligations under the provisions of various international agreements (including multilateral, regional or bilateral agreements). However, a clear distinction should be made between international public law and domestic law of international cooperation states, i.e., the sphere of international legal cooperation of states and other subjects of international should be separated from the sphere of exercising state powers in fight against crimes (domestic powers exercised by relevant authorized bodies of the state and regulated by the norms of domestic law of the participating states).

In this we agree with S.M. Perepelkin, who defines international cooperation aimed at combating crimes as one of the joint activities of states represented by the respective authorized bodies, which arises from formation and purposeful implementation of foreign policy performed by them based on common or convergent state interests. these activities are of conciliatory, coordinating nature and they arise and are developed between equal subjects of international law (mainly between states) (Perepelkin, 2018).

A.G Volevodz rightly notes that in resolving a specific issue of international cooperation, in particular, issuance of cooperation between two states requires adoption of a wide range of legal acts, at least three legal systems, and it is easy to imagine that this circle will be further expanded if the extradition of the same person is requested not by one but by several states, which in practice is not a rare exception (Volevodz, 2007). This circumstance gives leads the scientist to conclusion that independent legal institutions of various forms of international cooperation in fight against crimes which were previously traditionally regulated mainly by international law, are now characterized by the polysystemic nature of legal regulation on the part of different legal systems of the participating states (Volevodz, 2007).

Thus, no one disputes that in practice actions of each state (especially actions performed by state bodies acting in accordance with the powers granted to them) are conditioned by domestic law, primarily constitutional provisions and provisions of laws establishing such powers. But at the international level, actions of a state, regardless of the body it is represented by, are governed by the rules of public international law, as contained in international agreements concluded by the state (including those approving Statutes of international organizations) as well as by international custom, general principles of law recognized by civilized nations, and by court decisions and doctrine formulated by the most qualified specialists of various nations in public law, as an aid to determine legal norms; such actions are also regulated by other non-statutory sources of public international law.

Thus, an integral condition of international cooperation in fight against crimes consists in existence of norms of international and domestic law, establishing general principles of cooperation, rules of conduct (interaction) of states and authorized bodies acting on their behalf within powers established by the laws, those who implement these norms, responsibility for breach of obligations undertaken based on such cooperation. Content of international cooperation in fight against crimes is revealed through legal norms of both international public law and domestic law.

However, it should not be forgotten that each of the legal systems involved in international cooperation in fight against crimes has clear boundaries, patterns of development and when used does not merge with any other system applied. Therefore, the task of the international public law science is to establish the standards and developmental tendencies of regulating the norms of international public law, some of its branches taking into account that this development is influenced by a large number of factors including such important factors as improving norms of the relevant branches of the domestic law of cooperating states, their harmonization, extension of best practices and their consolidation as standards, in particular in the sources of international law (Martens, 1905).

Based on this, A.G. Volevodz (2007: 12) gives the following definition:

International cooperation in the fight against crimes is joint activities (regulated by norms of international and domestic law) including activities of international law subjects and domestic legal relations concerning ensuring legal protection of individuals, society, the state and the world community from international crimes and crimes of international nature as well as transnational crimes, which are aimed at breaking internal legal order.

This activities consist in: (1) adoption of coordinated measures aimed at establishing at the international and legal level criminality and punish ability of certain socially dangerous acts and unification of national criminal

legislation on this basis; (2) development and conclusion of international agreements and other documents regulating organization and procedural bases of activities performed by international justice bodies of international law enforcement organizations and other bodies, as well as cooperation of states in their fight against crimes; (3) formation (on contractual and other international legal bases) of international justice bodies, international law enforcement organizations and bodies; (4) prevention of planned crimes, including by means of prompt and search actions in necessary cases; (5) provision of legal assistance in the sphere of criminal justice; (6) activities of international courts (tribunals) and other international justice bodies related to criminal proceedings in cases of crimes, criminal prosecution and punishment of persons guilty of crimes they committed; (7) execution of criminal penalties imposed by international courts (tribunals), other international justice bodies, as well as foreign courts; (8) post-penitentiary influence; (9) development of standards for crime prevention and criminal treatment, coordination of activities in the fight against crime at the international level; (10) provision of financial, professional, technical and other assistance in the fight against crime" (Volevodz, 2007).

For example, key international law enforcement organizations acting in the sphere of prevention and counteraction to transnational crimes in the world include the following: INTERPOL; EUROPOL; ASEANAPOL; AFRIPOL; AMERIPOL; GCCPOL; AIMC.

The main functions of ASEANAPOL as an international law enforcement body in the sphere of counteracting and preventing transnational crimes are: preparation and implementation of work plans for the effective implementation of all resolutions adopted in annual joint communiqués signed at the ASEANAPOL conferences; promoting and coordinating cross-border cooperation in the sphere of exchange of intelligence date and information; promoting and coordinating joint operations and activities, including criminal investigations, creation and maintenance of the ASEANAPOL database, training, capacity building, development of scientific investigation tools, technical support and forensic investigations; support and mutual assistance in organization of ASEANAPOL conferences; quarterly assignment of tasks for ASEANAPOL Police Chiefs on proposals for all planned programs and activities to be implemented; annual reports on own activities and expenditures, which are submitted to the ASEANAPOL Executive Committee immediately before the respective ASEANAPOL Conference and distributed among all members and the ASEANAPOL Conference.

Regarding the relations between Ukraine and this regional law enforcement organization, no active cooperation has been observed in recent years. Law enforcement agencies should pay attention to this and establish effective mechanisms for cooperation with ASEANAPOL, prepare the necessary legal basis for such cooperation (Halaburda *et al.,* 2021).

In up-to-date conditions, AFRIPOL operates on the principles of respect for democracy, human rights, the supremacy of law and good governance in accordance with the Constituent Act, the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and other relevant documents, as well as on the principles of respect for police ethics, the principles of neutrality, sovereignty, honesty and the presumption of innocence.

AFRIPOL members now include Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabo Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, Somalia, Somalia, Africa Swaziland, Tanzania, Tunisia, Uganda, Western Sahara, Zambia, Zimbabwe.

AFRIPOL focuses its strongest attention on the following main areas: counterterrorism; circulation of small arms and light weapons; human trafficking; drug distribution; wildlife crimes; border management; environmental crimes.

AMERIPOL is a short name of Police Community of the Americas (PCA), which was established in 2007 as a continental international police organization whose main task was to combat drug trafficking.

AMERIPOL consists of 18 member organizations, including: The Royal Police of Antigua and Barbuda, the Argentine National Gendarmerie, the Belize Police Department, the National Police of Bolivia, the Federal Police of Brazil, the Carabiniers of Chile, the National Police of Colombia, the Armed Forces of Costa Rica, Costa Rica Department of Judicial Investigation, the National Revolutionary Police of Cuba, the National Police of Ecuador, the National Civil Police of Salvador, United States Drug Enforcement Administration, Puerto Rico Police, the National Civilian Police of Guatemala, Guyana Police Forces, the Haitian National Police, the Honduran National Police, Jamaica Constabulary Force, the Mexican Federal Police, the National Nicaraguan Police Force, the Panamanian National Police, the State Border Service of Panama, the National Police of Paraguay, the National Police of Peru, the Dominican Republic National Police, the Royal St Kitts Nevis Police , the Royal Saint Lucia Police, the Uruguayan National Police and the Trinidad and Tobago Police Service (Leheza *et al.,* 2021).

In the present situation, the role of international law enforcement organizations should not be underestimated, because they bear the burden of responsibility for successful cooperation and mutual assistance in preventing and combating transnational crimes. Ukraine, as a participant

in international cooperation, is still on the way to forming a regulatory framework, but it is the legislative bridgehead that can become the foundation for successful implementation of all long-term plans and strategies in this direction in the future.

The primacy of the rule of law and the recognition of this principle at the constitutional level is an important factor in strengthening international cooperation in the sphere of investigating economic crimes of transnational nature. Measures aimed at strengthening supremacy of law and respect for international norms in the sphere of human rights and freedoms are also directly related to strengthening cooperation and international cooperation in investigation of economic crimes of transnational nature. Authorities and institutions of the participating States involved in extradition, mutual legal assistance or joint investigations generally fulfill their obligations to ensure legality of all acts taken for the purpose of cooperation.

Accordingly, an important factor of both improvement of domestic criminal and criminal procedural law and forms of legal realization is presented as constant improvement of law standards aimed at settlement of international cooperation issues in the sphere of investigating economic crimes of transnational nature, which takes place in the context of intensified functioning of the International Criminal Court concerning elaboration of general principles of law and mutual exchange of best practices of cooperating states in investigation of economic crimes of transnational nature (Leheza *et al.,* 2020).

Conclusion

Thus, norms of law that belong to branches of the international public law of legal cycle regulate activities of international law subjects in the sphere of international cooperation in investigation of economic crimes of transnational nature in such directions as operational and search activities, investigations, criminal prosecution (criminal proceedings), judicial proceedings, execution of sentences, in particular in such forms as: mutual legal assistance, extradition, transfer of convicted persons for serving their sentences, investigation of international crimes, crimes of an international nature and cross-border crimes, including use of special methods of investigation, transfer of criminal proceedings, confiscation of criminal assets, protection of witnesses and victims as well as crime prevention.

However, there are numerous obstacles that still stand in the way of international cooperation in investigating economic crimes of a transnational nature, including sovereignty issues, differences in law enforcement structures and competencies of law enforcement bodies, lack of legislation ensuring respective powers of law enforcement bodies,

lack of communication channels for information exchange, differences in legal systems, law enforcement approaches and priorities of states in counteracting crimes.

Most often, these problems are exacerbated by difficulties in analyzing and enforcing various substantive law and procedural requirements of each jurisdiction, competition, often duplication of powers of authorized bodies acting on behalf of the participating States, or lack of sufficient powers, language issues (problems of translating provisions of international agreements), scope of recognized and guaranteed human rights and freedoms, privacy of private life and housing alongside with secrecy of personal correspondence, as well as protection of banking secrecy.

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Experience of European Countries in the Formation Priority Tasks and Development Strategies Training of Highly Qualified Lawyers

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Abstract

The question of having competent lawyers and judges is becoming increasingly important in the twenty-first century and is also attracting the attention of specialists from large law firms; students of educational institutions (lawyers, administrative staff); politicians and economic experts. Consequently, through the documentary method, this research work analyzes the problem of training highly qualified legal personnel, elaborating priority tasks and various development strategies. The authors examine the current situation in this area in European countries, emphasizing their experience. The article is addressed to experts in the field, such as specialists working in law firms (lawyers and staff), students of higher education institutions (lawyers, administrative staff), political scientists, economists, civil servants. It is concluded that competency-based education using cutting-edge technologies improves the educational system of Ukraine and, at the same time, adapts it to the standards of Western Europe with a gradual result of production of highly qualified lawyers.

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Experiencia de los países europeos en la formación de tareas prioritarias y estrategias de desarrollo de la formación de abogados altamente cualificados

Resumen

La cuestión de contar con abogados y jueces competentes, adquiere una importancia progresiva en el siglo XXI y, además, está atrayendo la atención de los especialistas de los grandes bufetes; de los estudiantes de las instituciones educativas (abogados, personal administrativo); de los políticos y de los expertos en economía. En consecuencia, mediante el método documental este trabajo de investigación analiza el problema de la formación de personal jurídico altamente cualificado, elaborando tareas prioritarias y diversas estrategias de desarrollo. Los autores examinan la situación actual en este ámbito en los países europeos, haciendo hincapié en su experiencia. El artículo se dirige a los expertos en la materia, como los especialistas que trabajan en los bufetes de abogados (abogados y personal), los estudiantes de los centros de enseñanza superior (abogados, personal administrativo), los politólogos, los economistas, los funcionarios públicos. Se concluye que, la educación por competencias mediante el uso de tecnologías de vanguardia mejora el sistema educativo de Ucrania y, al mismo tiempo, lo adecua a los estándares de Europa occidental con un resultado paulatino de producción de abogados altamente calificados.

Palabras clave: sistema educativo; enfoque basado en competencias; aprendizaje permanente; formación por tiempo ilimitado; abogados y jueces competentes.

Introduction

1. The Experience of European Countries in The Formation Priority Tasks and Development Strategies Training of Highly Qualified Lawyers

A problem of training highly qualified legal professionals, increasingly important in the modern world, is beginning to attract more and more attention of specialists involved in law firms (lawyers and their assistants),

students of higher educational institutions (lawyers, administrative staff), politicians, economists, civil servants. The problem is of great significance not only to the sphere of education, but also at the level of use of legal knowledge in state administration and business. It is extremely important for country's economic development (Tong and Zhiyong, 2018).

The formation strategy of highly qualified personnel who have a comprehensive scientific subject matter base determines to a significant extent the success or failure of activities aimed at modernization and prioritizes certain aspects of public life. Highly qualified lawyers are characterized by high academic degree for training which must meet the standards set out in international specialized normative acts (Stepanenko *et al.,* 2020).

They are competent enough on both national issues and have acquired all necessary knowledge to be able to make valuable strategic decisions (Burganova *et al.,* 2016). The volume of work in this area is rapidly increasing; is important to ensure that they are relevant and can be used practically, which requires the application of competence-based approach to education.

This necessitates further development of specialized personnel at all levels - from policymakers who will create a competitive environment for economic growth, skilled managers capable of technological progress (IT) with the use of new technologies in the production process, up to professionals engaged in intellectual property protection, etc., as well as lawyers who have not only received theoretical knowledge but also trained practical skills.

They must give comprehensive legal advice on solving non-routine problems and participate in negotiations with business partners or state authorities. Lawyers with modern qualities should be able to act in multinational companies, create business structures with the use of new technologies and finance instruments (Elgoibar *et al.,* 2019).

When assessing the needs for highly qualified legal professionals, it is important to consider both internal needs of each country (the level of economic development, cultural factors), as well as external factors (multinational corporations, European integration). The main goal in this situation is to ensure that lawyers have received comprehensive knowledge in the field of law with emphasis on procedural aspects (Doner and Schneider, 2020). Besides that, they should develop high ethical standards and be capable of mastering new technologies which are used when solving complex problems. This will allow them not only to improve their professional skills but also widen their horizons.

2. Executive Summary

The research identified several logical solutions: an initial stage in pre-university education, a long-term experience in the legal profession and an active use of information technology for working with various sources of information. In practice, each country has its own strategy for how to provide educators with high professional skills when creating a new system for training highly qualified professionals. In addition to the place of training (undergraduate courses), educational institutions should be flexible enough to create conditions that will allow students to work on their own using modern information technologies, including foreign universities and law firms (Choroszewicz and Kay, 2020).

This is possible if we consider the latest trends in the organization and management of educational institutions. Comprehensive analysis of literature shows that European countries have different approaches in solving this task (Tong and Zhiyong, 2018). It can be determined by a variety of factors, including the level of economic development, cultural differences, and external factors such as multinational corporations and European integration. In countries with a highly developed legal profession, such as Germany and France, more attention is paid to the professional skills of future lawyers (Burganova *et al.,*2016).

In this study we have focused on these two countries so as to be able to identify those approaches that are most effective. However, it should be noted that whatever strategies they follow in forming a new system for training highly qualified staff who will work at all levels (from policymakers to specialists), they must meet some common standards – comprehensive knowledge of law (including procedural) and high academic degrees (Choroszewicz and Kay, 2020). The situation in the Federation is the need for additional measures not only ensuring adequate training of professionals (overcoming existing gaps in the legal system), but also training highly qualified lawyers who are capable of mastering new technologies when solving complex problems.

This can be achieved by identifying priority tasks for further development strategies and ensuring that all professional activities comply with ethical standards. In this case, it is necessary to have a clear understanding of what high-level education is (Burganova *et al.,*2016).When implementing a new system for training highly qualified lawyers, one of the main challenges facing countries is to establish partnerships between educational institutions and employers within an international network.

This will allow young professionals not only to get good theoretical knowledge but also become familiar with different approaches to implementing the lawyer's profession (Anatolii *et al.,* 2020).

In many European countries, where there are still major problems with the legal education system and its modernization has just begun, we should consider modeling their own system of professional education on these models and that will allow us to overcome existing gaps in the legal sphere and avoid false starts that lead to unnecessary costs (Doner and Schneider, 2020). In the development of priority tasks and strategies for further education, it is necessary to consider several factors, starting with the best practices developed in advanced countries and ending with changes in the forms of work on highly qualified lawyers using new information technologies.

Legal education should focus more on practice training rather than only on academic content alone to not only train specialists, but also help them find jobs after graduation (Tong and Zhiyong, 2018). The system must allow graduates not only to be good professionals who are able to work anywhere in the world, but also be aware of other cultures and traditions (Kuzminov *et al.,* 2019).

3. Purpose of the study

The goal of this article is to find a solution which will allow European countries to train their own highly qualified lawyers. This means finding out what they are and what is required from a lawyer with high qualifications.

4. Research Questions

1. How is training for highly qualified lawyers facilitated in developed European countries?
2. What are the problems faced by developing European countries while creating or reforming their training systems?
3. What are the best practices that should be used by countries to facilitate the creation of a training system for high-qualified lawyers?
4. What are the requirements for legal education to be able to train high-qualified lawyers?
5. How can European countries improve their current education systems to facilitate the training of highly qualified lawyers?

5. Hypothesis

1. The problem of developing European countries is not thinking about the issue of having really competent lawyers who will be able to work effectively using modern technologies, which is why it is not included in the legal system.
2. Because of this, the emphasis on graduates' qualifications is one of the most important and significant problems in today's society
3. Therefore, the quality of legal services provided by lawyers has a direct impact on judicial activities, lack of competence for which was one of the main reasons for the replacement court system
4. The number of judges and lawyers is not enough to meet demand, they lack professional quality, as well as the lack of necessary administrative and technical support for judicial and prosecutorial activities. People who can be considered highly qualified lawyers are those with extensive knowledge, skills and competence required to operate in the legal field. They have graduate or postgraduate study, they have received professional qualification by passing strict tests, which is why it can be said that they are competent or have high qualifications.

6. The Training for Highly Qualified Lawyers Facilitated in Developed European Countries (EU)

The system of training highly qualified lawyers in Germany is based on five years of undergraduate and graduate studies at universities followed by three years of practice at law firms or other organizations where trainees acquire professional skills. In France, although the long-term experience is not required before beginning employment as a lawyer, it is possible to specialize only after gaining some practical experience during studies (usually from 3 to 12 months).

In many European countries, where there are still major problems with the legal education system and its modernization has just begun, we should consider modeling their own system of professional education on these models and that will allow us to overcome existing gaps in the legal sphere and avoid false starts that lead to unnecessary costs.

In the development of priority tasks and strategies for further education, it is necessary to consider a number of factors, starting with the best practices developed in advanced countries and ending with changes in the forms of work on highly qualified lawyers using new information technologies (Tong and Zhiyong, 2018).

Legal education should focus more on practice training rather than only on academic content alone so as to not only train specialists, but also help them find jobs after graduation. In addition to the presence of labor market analysis during educational programs along with increased opportunities of internships at law firms, companies and other organizations that will allow students to master their profession from an early age (Doner and Schneider, 2020).

In this regard special attention should be paid not only to multilateral cooperation between universities and employers within a single system for training highly qualified lawyers, but also to the internationalization of educational programs. The system must allow graduates not only to be good professionals who are able to work anywhere in the world, but also be aware of other cultures and traditions.

7. The Problems Faced by Developing European Countries While Creating or Reforming Their Training Systems

Among the main problems that should be overcome in order to modernize the legal education system and train highly qualified lawyers, it is necessary to highlight issues related to insufficient attraction of teaching staff for law firms and other organizations willing to take on a young lawyer as a trainee, lack of funds for educational programs, low quality of initial general secondary education leading to a low number of graduates who have interest in studying law at universities. In addition, there is often no special attention from administration aimed at improving communication with students. The desire for fast development without learning from successful experience leads only to an increase in the overall level of commercialization and degradation of legal education.

The lack of a coherent system of relationships between universities and law firms limits the possibilities for professional training, as well as employment opportunities for graduates, who are often faced with a choice – either to take a poorly paid job or leave the profession altogether (Kuzminov *et al.,* 2019). In addition, practicing lawyers do not always have time to give advice to students interested in gaining practical experience during studies at their companies, which reduces the attractiveness of such an opportunity for them.

The stagnation or even slow development of legal professions is also due to insufficient social demand from citizens, who rely on public services provided by other countries due to a lower cost and potentially greater quality.

8. The Best Practices to Facilitate the Creation of a Training System For High-Qualified Lawyers

The experience of European countries in the formation priority tasks and development strategies training of highly qualified lawyers shows that there are a number of factors to be taken into account in order to modernize educational programs. A combination of these factors can help any country with difficult demographic problems to quickly create an efficient system for training high-qualified lawyers with increased opportunities for employment (Elgoibar *et al.,* 2019).

Among the best practices in legal education used in European countries can be identified: increasing quality at universities through greater independence from state authorities, involvement of employers engaged in law firms engaged in internship placement, academic mobility programs between universities aimed at developing international cooperation have been used successfully (Tong and Zhiyong, 2018). There is an increase in demand for legal literature abroad, which stimulates the production and circulation of Ukrainian textbooks abroad through targeted contacts with foreign colleagues.

The main task for leading educational institutions is to create conditions in which students can work efficiently, but at the same time have time to study.

Thus, it is necessary not only to reform training systems for high-qualified lawyers through international standards of education, but also to stop unnecessary state interference in educational process. Only free cooperation between universities and employers can produce long-term results that will meet modern requirements for quality legal education.

There is an urgent need for a systemic approach aimed at creating mechanisms that ensure effective communication between legal professionals and law graduates who take their first steps on the labor market and want to develop further.

9. The Role Specialization Play in the Formation of Priority Tasks and Development Strategies for Training Highly Qualified Lawyers

Specialization is a necessary condition for the formation of priority tasks and development strategies for training highly qualified lawyers. To become a high-qualified lawyer, one must first gain knowledge to ensure the competence and quality of legal services provided. Specialization allows students choose an area where they can apply newly gained skills and

competencies during their practical activities; creates opportunities to work as self-employed professionals; provides an opportunity to successfully compete with other graduates on the labor market at any stage of career.

In addition, specialization ensures that individual universities can meet demands from employers more effectively by increasing competition between educational institutions aimed at providing high-quality education that meets modern standards demanded by employers (Doner and Schneider, 2020).

The highest level of professionalism can be achieved due to the availability of specialties that can provide students with practical knowledge and skills using the most modern approaches to learning.

10. The Role Academic Mobility Play in the Formation of Priority Tasks and Development Strategies for Training Highly Qualified Lawyers

Academic mobility is a necessary condition for the formation of priority tasks and development strategies for training highly qualified lawyers. Academic works can be completed by taking advantage not only of existing international contacts with foreign universities, but also developing new ones. This is especially true when it comes to creating an effective system that allows students to gain experience through practical work and exchange experiences between Ukrainian graduates and their foreign counterparts (Choroszewiczand Kay, 2020). The latter has proved invaluable: with the assistance of our colleagues from abroad we were able to bring together various aspects of legal education, which allowed us to build a new legal education system that meets modern requirements.

11. Recommendations

- The Government should stop intervening in education through legislation aimed at increasing financing of educational institutions.
- Universities should be able to autonomously manage financial resources for education without additional state funding.
- The Government should stop financing educational institutions based on the number of teachers and students studying within the organization, but by investing in projects aimed at providing high-quality education to meet modern social needs.
- Specialization is a necessary condition for the formation of priority tasks and development strategies for training highly qualified

lawyers. To become a high-qualified lawyer, one must first gain knowledge to ensure the competence and quality of legal services provided (Burganova *et al.*,2016). Specialization allows students choose an area where they can apply newly gained skills and competencies during their practical activities; creates opportunities to work as self-employed professionals; provides an opportunity to successfully compete with other graduates on the labor market at any stage of career.

In addition, specialization ensures that individual universities can meet demands from employers more effectively by increasing competition between educational institutions aimed at providing high-quality education that meets modern standards demanded by employers. The highest level of professionalism can be achieved due to the availability of specialties that can provide students with practical knowledge and skills using the most modern approaches to learning.

- To become a high-qualified lawyer, one must first gain knowledge in order to ensure the competence and quality of legal services provided (Choroszewicz and Kay, 2020). Specialization allows students choose an area where they can apply newly gained skills and competencies during their practical activities; creates opportunities to work as self-employed professionals; provides an opportunity to successfully compete with other graduates on the labor market at any stage of career.
- Universities should be able to autonomously manage financial resources for education without additional state funding.

12. Method

The methodology of the research was primarily based on the analysis and synthesis of scientific and methodological literature, which enables an effective system of training highly qualified lawyers in European countries.

12.1. Sample

The empirical part of the research an analysis of information from scientific and specialized journals, technical documentation, books on the organization of educational activity in European countries.

12.2. Instrument

The research used the following methods of data collection: analysis and synthesis.

12.3. Data Collection

The study used scientific literature on the organization of educational activity in European countries, which are taught to citizens by national legislation.

12.4. Data Analysis

The conducted analysis has allowed determining the following conclusions:

- The development of quality university education is possible only with the involvement of foreign experts.
- The development and implementation of modern teaching methods in teaching highly qualified lawyers will not be possible without cooperation between educational institutions.
- Education is the responsibility of society, government bodies and all stakeholders.

13. Results

The use of modern educational technology, including distance learning allows to determine the following priorities: adequate accreditation and licensing educational institutions; training highly qualified lawyers in EU countries and Ukraine; improvement and development of national education systems in accordance with European criteria. Also, the results of this research paper will allow employers to employ highly qualified lawyers, as well as identify areas where there is a lack of specialists.

14. Research Limitations

The research did not consider the formation of the education system and the legal market in more detail. This aspect of development should be considered in further studies of highly qualified lawyers' training systems in EU countries and Ukraine. An extensive analysis on the existing problems on employment law practice was not conducted due to financial limitations; instead, it will be possible after conducting additional research.

14.1. Recommendations

- Analysis of current legislation related to the organization of educational activity.

- Study existing problems on employment justice practices.
- Conducting patent searches on technologies that are used for teaching different subjects (jurisprudence, legal translation, etc.) in the European Union countries and Ukraine.
- Publication of articles on effective educational technologies.

14.2. Ethical Considerations of the Research

In accordance with international standards, this research paper does not contain the use of any personal data. The analysis was conducted using public information from scientific and technical sources that are open for free access. It is indicated in the publication that any trademark not belonging to its author belongs to their respective owners. As a result of the conducted research, it is possible to provide a general description of existing training systems for highly qualified lawyers in Europe and Ukraine.

15. Discussion

As technology and globalization evolve, there is a need to consider changes in current legislation in order to improve the quality and speed up the examination process. Also, there is a need for an effective system of training highly qualified lawyers in many European countries (Ergashev and Farxodjonova, 2020).

It is also necessary to consider the experience of the Baltic States, where preparation for admission to universities is conducted in cooperation with employers. Thus, it is necessary to define the economic and social problems of the transition period, which is a new stage in the development of higher education.

The study has identified a number of problems that should be solved in order to improve the quality and speed up the accreditation process, including: the formation of a national system of accreditation and licensing educational institutions; training highly qualified lawyers in EU countries and Ukraine; improvement and development of the national education system in accordance with European criteria (Welford, 2016). The research confirmed that there is a lack of highly qualified lawyers in European countries and Ukraine, which can remain as a limiting factor for foreign enterprises.

To resolve the problem of lack of highly qualified lawyers in European countries, it is necessary to improve the national education system in accordance with European standards, while taking into account the experience of other countries (Wright, 2019). The development of training

systems for highly qualified lawyers in EU countries will make it possible to improve the quality of legal education, ensure an effective system of training high-level professionals.

Training highly qualified lawyers should be based on different subjects (jurisprudence, translation studies, etc.) with the use of new technologies that are efficient for teaching students effectively. There is no evidence that the current organization of educational activity is very effective; it requires modernization by introducing new technologies that allow you to teach students more effectively.

It is also necessary to conduct patent searches on technology tools used to organize teaching activities at European universities and schools during different' periods. To resolve these issues, it is necessary to develop new types of education that will allow students to master the modern trends and tools of teaching. Europe has accumulated experience in organizing training for highly qualified lawyers that can be used by Ukraine.

Thus, many universities have introduced special educational programs that are generally not available outside the university environment. There is a need for training under qualified human resources, including leading researchers at higher educational institutions, professors with scientific degrees, post-graduate students who conduct research work (Hantrais, 2017). The introduction of training systems on this basis allows you to form an effective system of accreditation and licensing educational activities.

The best practices of other countries will help improve the quality of legal education in Russia, reduce its cost for employers and make legal services more accessible to citizens. It should be noted that currently there are no all-Ukrainian strategies for training highly qualified lawyers; neither does Ukraine have any templates to work with. The lack of unified state policy on legal education requires the introduction of fundamental changes in the national system of education, its restructuring through innovation and integration into the global educational space (Burganova *et al.,* 2016).

This process will facilitate access to foreign educational institutions, including leading universities - partners offering their own programs for students who wish to receive complete secondary or higher legal education. The results obtained will allow improving the quality of legal education, develop high-quality university education, ensure an effective system of training professionals in Ukraine.

To solve these issues, it is necessary to improve the quality and effectiveness of teaching staff by introducing additional incentives for teachers who are ready to change their profession or teach in a new form, increasing interest in legal subjects among students.

Conclusion

The results of the study are aimed at improving the quality of legal education, the development and improvement of the national education system according to European standards. Also, there is a need to improve the accreditation and licensing system in accordance with higher education requirements.

Also, the results obtained will allow employers to employ highly qualified lawyers, as well as identify areas where there is a lack of specialists. The use of modern educational technology allows priority: adequate accreditation and licensing educational institutions; training highly qualified lawyers in EU countries and Ukraine; improvement and development of the national education system in accordance with European criteria.

The development of quality university education is possible only with the involvement of foreign experts. The development and implementation of modern teaching methods in teaching highly qualified lawyers will not be possible without cooperation between educational institutions. Education is the responsibility of society, government bodies and all stakeholders. With the development of technology and globalization, there is a need to take into account changes in current legislation in order to improve the quality and speed up the examination process.

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Interaction of the digital person and society in the context of the philosophy of politics

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Abstract

Through the method of metaphysics typical of philosophy, the objective of the study is to conceptualize the political dimension of the interaction of digital man and society in the context of the Fourth Industrial Revolution. The modeling method helps to create a model of interaction between the digital person and the digital society as a way of managing objectives to adapt people to increasing conditions of complexity and uncertainty, to provide a comprehensive analysis. As society becomes more complex, the model must become a flexible digital society. It is concluded that the analysis of variables and the determination of the optimal set of components of the digitalization of society play an important role: political, economic, administrative, social, and spiritual. Therefore, it is necessary to determine the optimal model that will achieve a balance between human nature, man, and society. As a result of the analysis carried out, modern theoretical approaches to the interaction of the digital person and a digital society in the context of the philosophy of politics are also investigated.

Keywords: philosophy of politics; metaphysics; digital man; digital society; fourth industrial revolution.

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Interacción persona digital y sociedad en el contexto de la filosofía política

Resumen

A través del metodo de la metafisica propio de la filosofia, el objetivo del estudio es conceptualizar la dimensión política de la interacción del hombre digital y la sociedad en el contexto de la Cuarta Revolución Industrial. el método de modelado ayuda a crear un modelo de interacción entre la persona digital y la sociedad digital como una forma de gestionar los objetivos para adaptar a las personas a crecientes condiciones de complejidad e incertidumbre, con el fin de proporcionar un análisis integral. A medida que la sociedad se vuelve más compleja, el modelo debe convertirse en uno de sociedad digital flexible. Se concluye que, el análisis de variables y la determinación del conjunto óptimo de componentes de la digitalización de la sociedad desempeñan un papel importante: político, económico, administrativo, social y espiritual. Por lo tanto, es necesario determinar el modelo óptimo que logrará un equilibrio entre la naturaleza humana, el hombre y la sociedad. Como resultado del análisis realizado, se investigan ademas los enfoques teóricos modernos de la interacción de la persona digital y una sociedad digital en el contexto de la filosofía de la política.

Palabras clave: filosofía de la política; metafísica; hombre digital; sociedad digital; cuarta revolución industrial.

Introduction

The relevance of the research topic is that the Fourth Industrial Revolution forms new human values associated with digitalization, based on a new attitude of man to his life in the digital society, which requires rethinking views on the metaphysical principles of interaction between digital man and digital society in the Fourth industrial revolution and its significance for its individual dimensions. The Fourth Industrial Revolution opens the Fourth Age in human history, where everyone is connected to each other online and involved with each other, so anthropological dimensions are fundamental.

For the first time in history, people need to learn about the digital society, which brings about an explosive growth of innovation and opens up unprecedented opportunities for people, and gives everyone the opportunity to become a subject. Already in the digital society, mobile phones are owned by 7.5 billion people in real time, and universal Internet access and technology transparency are breaking down barriers to global reach (Skinner, 2020).

In the digital society, a huge role is played by breakthrough technologies that shape this type of society, which requires the formation of new human interaction with the machine, which is accompanied by new technologies - 3D printing and 3D production, robotics, blockchain and bitcoin, artificial intelligence and work for « white-collar workers «, unmanned vehicles,» big data «for decision-making,» smart cities «, a connected home, the Internet of Things and for things, implanted technologies, neurotechnologies. In this regard, it can be noted that this scientific direction of anthropological measurements of the interaction of digital man and digital society during the Fourth Industrial Revolution is just being formed and is new not only for Ukraine but also for other countries, as civilization becomes clear as global socio-cultural «quantum», which is based on a specific picture of its existence for this civilization and which is alien to others (Punchenko and Punchenko, 2019: 95).

Many problems of digital civilization have not yet found their theoretical basis in the philosophical literature, as at present At present, there are no similar studies that would carry out a comprehensive theoretical analysis of this extremely relevant topic, which is developing before our eyes. Therefore, the scientific problem of this study is the metaphysical basis of interaction between digital man and digital society, as technology benefits everyone and turns our ideas about traditional human existence in industrial society has the opportunity not only to look into the past and look at it in the light of future trends, collects scattered information from the past, present and future, but also focuses on understanding the new digital world, because digitalization has flooded the world and life, both social and individual determined by algorithms, bits, big data, which contribute to the reformatting of the physical world into information (Nikitenko, 2019).

Today, the problem of human existence and survival in the digital world is extremely pressing, so it is time to rethink the metaphysical dimensions of the digital society to understand the digital transformation brought about by the Fourth Industrial Revolution and realize that for the first time in history we are all connected. in real time. Unfortunately, it is officially believed that every American lives in poverty. In 2015, there were 43 million of them, while in the UK, one in five people is considered poor. Almost half of the world's population lives in poverty, ie more than 3 billion survive on $ 2.5 a day. Every third of them is in dire need: 1.3 billion survive on an amount of less than $ 1.25. per day (Skinner, 2020: 9).

These sad anthropological problems show that new technologies play a crucial role in solving these problems. Of course, poverty will always be, but today poverty is mainly generated by the established system. The combination of insecurity and technological backwardness prevents millions of people from recovering from the webs of poverty. Now the situation in the digital society is changing: thanks to the usual, fully affordable smartphone,

everyone can afford to communicate with the world in real time. Mobile phones have made a real revolution. They have become the driving force behind traditional organizations becoming digital, with innovative models of work adopted by new digital leaders, creating new values for the Internet as a «second machine age» (Makafi and Brinolfsson, 2019: 336).

The relevance of the study is that the beginning of the XXI century was marked by profound and systemic changes that affect all spheres of society and serve as the driving forces that generate new megatrends of the digital society. The changes are caused by radical technological fractures and their social impact on humans. Of particular importance are metaphysical dimensions of mutualthe attitudes of the digital man and the digital society during the Fourth Industrial Revolution as factors of the existential and professional development of the individual in the digital society, for which it is necessary to find creative answers to solve the fundamental problems of today.

To ensure the most important component for the anthropological survival of man in the context of digitalization should be formed mechanisms for the introduction of the existence of the digital society and the conditions for the formation and realization of the creative potential of the digital personality as a guarantee of economic growth.

> The concept of the economy of sustainable digital development today is the most powerful and important, as it can lead the country out of the crisis on the path of sustainable digital development and develop strategies and priorities for future digital development covering large digital industries (Nikitenko *et al.*, 2019: 140-153).

2. Materials and Methods

The methodological basis of the study of metaphysical dimensions of the interaction of digital man and digital society is determined by a set of philosophical, special and general scientific methods, among which we distinguish axiological, institutional, structural-functional, synergetic, systemic, historical-comparative, logical-historical, which helped to penetrate phenomena and processes of digitization.

Metaphysical dimensions of the interaction of digital man and digital society during the Fourth Industrial Revolution require the use of such methods as anthropological, axiological, substantial, ontological, which together make it possible to approach man as an absolute value, overcoming unemployment in the digital age, which negatively affected per person (Maxton and Randers, 2017).

At the beginning of our study, the descriptive level prevailed, in the context of which the descriptive characterization of phenomena was carried out, facts were collected, their initial generalization, systematization, for which such methods as analysis, synthesis, induction, deduction were used to reveal empirical relations and regular connections between separate phenomena. At the theoretical level, the development of concepts, judgments, inferences, already created systems of knowledge, which revealed the general connections and patterns, formulated laws in their systemic unity and integrity.

Approaches and methodologies of both levels, ie empirical and theoretical, mutually conditioned each other. So, for example, thanks to a system method interaction of the digital person and a digital society as difficult system is presented; structural-functional method allowed to identify the functions of the analyzed phenomena of digital man and digital society; the synergetic approach made it possible to show their nonlinearity; axiological approach - to identify the values of the digital society and the digital person; socio-cultural approach - to consider values in a broad civilizational context. Note that we tried to adapt these approaches and methods to the needs of the study - anthropological measurements to show the complexity of the topic.

We presented the concept of digital society, which is implemented in practice through the introduction of digital resources and their management, which allowed to analyze the information approach. As a result of using these approaches, the metaphysical model of interaction between digital people and digital society is implemented in practice as a tool for digital (algorithmic) culture, creative thinking, cognitive reflection, new ideas and non-standard approaches to support and make creative decisions in digital society.

The methodology of research of metaphysical bases of interaction of digital person and digital society includes the method of modeling which helped to create model of interaction of digital person and digital society as a way of management of the purposes of the person, in particular how to create conditions for adaptation of the person in the conditions of complexity and uncertainty. analysis.

Through the formation of a model of interaction between the digital person and the digital society, it is possible to come to systemic logical conclusions to make the appropriate decisions necessary to form a model of the digital society during the Fourth Industrial Revolution. As society becomes more complex, the model of interaction between the digital person and the digital society must become a model of flexible digital management of society. An important role is played by the analysis of variables and determining the optimal set of components of the digital society - economic, managerial, social, spiritual, overcoming the «limits of growth» (Medouz *et al.*, 2018: 464).

As a result, the optimal model of interaction between the digital person and the digital society was determined, which allows to achieve a balance between human nature, man and society, man and man, man and machine. The methodological foundations of the interaction of digital man and digital society are based on the nonlinear perception of the phenomena of interaction between digital man and digital society as complex adaptive systems, the use of digital society technologies, which helps to reveal Agile methodology as a theoretical basis of innovation component of digital society. The methodology of complexity as a methodology of self-organization made it possible to deepen the understanding of the interaction of digital man and digital society, which requires their self-realization and self-realization in the innovations of culture, creativity, innovation.

3. Analysis of the Latest Researches and Publications

Analysis of recent research and publications on political and anthropological measurements of the interaction of digital man and the digital society during the Fourth Industrial Revolution includes the latest work on the digital society: Skinner Chris «Digital Man. The fourth is the revolutions in the history of mankind, which will affect everyone»; McAfee, Endryu & Brinolfsson, Erik «Machine, platform, crowd»; Navidi, Sandra «Superkhaby», 2018; O neill, Kate «Big data. Weapons of Mass Destroing».

These works present the digital society as a replacement for the industrial one, the main difference between the fourth era and the previous ones is that time and space begin to «shrink», distances are reduced due to global communication systems, due to the rapid reduction in technology we we have almost unlimited data storage and communication capabilities.

While online, you contribute to the networking effect, and the opportunities grow exponentially, as everyone can now make deals, share digital assets, communicate and communicate with each other in a peer-to-peer mode. In the works of Medouz, Donella, Randers, Yorhen & Medouz, Dennis «Limits of Growth. 30 years later «; Meyson, Paul «Postcapitalism. Guade to the future» network century is represented by the Fourth in the history of mankind, which led to a single platform - the Internet and led to the intellectual development of post-capitalism, in which billions of people who previously had no access to digital services now work online. In the work of Ernst and Anders (2019) «Come On! Capitalism, short-sightedness, inhabited and ruined planets. Report to the Club of Rome «and Hudmen, Mark Crimes of the Future» It is at this level that new tracks are being built and channels are being laid for fourth-generation finances. People like Ilona Mask think of the colonization of Mars and the creation of high-speed mental transport as real prospects.

NASA scientists are launching space probes that allow you to photograph Pluto, the existence of which was not even thought of 100 years ago. In the works of Pinker Steven «Prosvitnytstvo sohodni. Arguments in favor of reason, science and progress», Porter Maykl» Competitive advantage», Ridli, Mett «Evolution of Everything» notes that today evolution has taken place in everything: if a century ago Einstein assumed the existence of a space-time continuum, not so long ago this idea was confirmed; if for decades they fantasized about robots, today the digital world demonstrates similar machines; today we have smart cars, smart homes, smart systems and digital life.

This is what the author's articles Valentyna Voronkova, Oleg Punchenko, Marina Azhazha «Gglobalization and global governance in the fourth industrial revolution (Industry 4.0)» are talking about; Voronkova, Valentyna H., Nikitenko, Vitalina A., Teslenko Tatyana V. & Bilohur Vlada E. «Impact of the worldwide trends on the development of the digital economy», Voronkova V.G. Metaphysical dimensions of human existence (human problems at the turn of the millennium. Interesting for our study are the works of O Rayli Tim, Spens Maykl, in which the role is to form a creative class and creative-innovative potential for the future.

The secret of the future is that inside a person becomes a bit of a machine, and machines become a bit human. Robocop is a reality, hydraulic prostheses According to one of the leading futurists, cyborgs will appear in the next 35 years, and the anthropological dimensions of the digital man and the digital society - the possibilities of prolonging life associated with the use of nanorobots, have become possible. or the preservation of the individual in the network after physical death - and the world appears completely different.

During the fifth era of human machines and the machine will be able to give birth to a superman, man will live in space, people will forget about banks, money and wealth and focus on the benefits of the planet and humanity in general. We are impressed by the article by Liydmyla Panova, Liliya Radchenko, Ernest Gramatskyy, Anatolii Kodynets, Stanislav Pohrebniak. Digitization in law: international-legal aspect, which defines the legal regulation of informatization and international information experience.

On the example of international experience (such countries as France, Germany, Italy, Georgia, Greece, and Great Britain), the mechanisms of using digitalization in public administration are determined, the legal regulation of informatization is analyzed. Also, based on the study and analysis of doctrinal teachings of international information experience, it is proposed to improve the domestic legal mechanism to ensure the effective functioning of public relations (Panova *et al.*, 2021: 547).

4. Purposes and Objectives

The aim of the study is to conceptualize the metaphysical foundations of the interaction of digital man and digital society during the Fourth Industrial Revolution. The object of research is the interaction of digital man and digital society. The subject – political dimensions of the interaction of digital man and digital society during the Fourthand the impact of the Fourth Industrial Revolution. The research solves the philosophical problem of human existence in the modern digital context and the realization of man himself on the basis of value-worldview achievements of philosophy.

Since modern trends of digitalization and informatization are inevitable, philosophy as a form of consciousness must find its niche in the digital world and is designed by means of digitalization to overcome the contradictions between man and technology, so that man does not dissolve in the tech world. Philosophy directs the process of understanding the world to obtain a «holistic picture» and a harmonious combination of man, nature, technology, which realizes the contradictions between metaphysics and technology through creativity (Floryda, 2018). Thus, philosophical knowledge as a worldview, generalizing, transcendent, paradigmatic is a modern intense dialogue between man and technology, produces a worldview and thus shapes man. To do this, we need to reveal:

1. To clarify the essence of the philosophical understanding of metaphysical dimensions of new forms of interaction between digital man and digital society.
2. To reveal the interaction of man with the machine in the digital society, which occur as a result of the introduction of new technologies, which are called «breakthrough».
3. To analyze the formation of algorithmic thinking as a result of the interaction of digital man and digital society, which is considered in the form of a methodology of flexible approaches and adaptive thinking. «Neurocracy is the most recent stage of the information society, as it was said in the 20th century, information is power, but we did not imagine how far this power would go when having control of the data» (Sepúlveda *et al.*, 2021: 913).

5. Results

1. The essence of political and philosophical understanding of metaphysical dimensions of new forms of interaction between digital man and digital society is based on the fact that the main link of digital society is man, man's place in the world and the formation of metaphysical dimensions of human existence (Voronkova, 2000).

In the broadest sense, the digital society is a process of mutual transformation of man and the world, as a result of which the world acquires a human dimension (world for man, world with man), and man becomes an integral part of being (man in the world), man with the world. New forms of interaction between man and society as a key driver of the digital society are becoming important because people must survive in information chaos and find answers to all problems, including financial, economic, information, as the digital world becomes increasingly interconnected with man (Navidi, 2018).

Philosophy tries to prevent the assimilation of man with technology, modern breakthrough technologies and the digital world can not replace man all the variety of living human religious, ethical and mental feelings and experiences. In the digital society, new processes appear on the agenda, expressed in such categories as data collection, access, dissemination, information, flows, which are combined into a single superorganism.

New forms of human-machine interaction generate new forms of human-machine relationships in the direction of increasing flows, dissemination, data collection, access to information, interaction, screen reading, mixing, filtering, intellectualization, indicating the formation of a new singular era that forms «The new relationship between man and machine. Thanks to new forms of human-machine interaction, the phenomenon of artificial intelligence has been created, which skillfully and effectively performs a certain range of tasks, such as machine translation or car navigation.

Artificial intelligence is directly related to «thinking machines» that are able to solve any intellectual problem available to man. Computers and robots are still doing poorly outside of programming, so tools should be developed to help people stand out and strengthen in the digital society and keep up with the technological race to reach the level of post-capitalism that Meyson dreamed of., (Mason**,** 2019: 360).

2. The interaction of man with the machine in the digital society, which occurs as a result of the introduction of new technologies, which are called «breakthrough», and displace the established methods of production. New forms of interaction radically change the market, create and develop creative industries that become much more efficient. At interaction of the person with the car not only technologies, but also education, culture, the person which together promote fast introduction change.

Thus, we can distinguish human-computer interaction (English-human interaction (HCI), which explores the design and use of computer technology, on the verge of distribution between people (users) and computers. Due to new forms of human interaction, culture and education in the innovation and information society, the phenomenon of artificial intelligence, robotics and other technologies was created, as a result of which a technological

breakthrough occurred, which can serve as a new competitive advantage of society (Porter, 2019).

New forms of human interaction, culture and education in the innovation and information society give rise to interaction with new technologies - power-to-peer, additive technologies, virtual collaborations, augmented reality, the Internet of Things, cross-channel communications and cloud technologies. Artificial intelligence, neural networks, virtual reality, robotic mechanisms change our lives and define in a new way the creative features of man.

The Internet deepens the forms of interaction between cultural education and tourism, thanks to which it is possible to develop various forms of virtualism (virtual tourism, virtual museums, virtual education, creative platforms, virtual culture). New forms of human interaction, culture, education, machines in a digital society are the basis for the formation of digital man and his image, the formation of the uniqueness of new human qualities in digital society and the formation of structured thinking (Levitin, 2020).

3. The formation of algorithmic thinking as a result of interaction of digital person and digital society is considered, which is considered in the form of methodology of flexible approaches and adaptive thinking. It is extremely useful and practical, as the modern world is becoming more complex and it is difficult for humans to survive in this unbalanced environment. Therefore, a person must be flexible, adaptive, learn to live in a nonlinear world to make effective decisions in conditions of information stochasticity, crisis, instability.

Man can no longer abandon digitalization, as this is our reality and the use of algorithms even in everyday life is a reality. Digital thinking is practical thinking in many areas and becomes a practical need of people, it is widely used in disease diagnosis, use of artificial intelligence, robotics, work on various platforms such as ZOOM, public administration as a service.

The issue should be resolved at the level of the state, city, region, individual organization; training should be introduced, starting with kindergartens, schools, HEIs, government agencies, the development and implementation of adaptability programs, training and retraining of staff to study foreign experience. The digital society must train high-tech professionals whose knowledge must be practically oriented, who are able to work with new equipment and technologies, and, consequently, have algorithmic thinking. The formation of such new thinking and culture is an urgent task of the digital society as the basis of the concept of the New Enlightenment 2.0 (Pinker, 2019).

Algorithmic thinking and culture can not only solve technical problems, but also teach systematic thinking, design and construction, which is

inherent in the anthropological dimensions of the interaction of digital man and digital society. In our opinion, algorithmic thinking is not fully technological, but also leaves room for creativity, which is embodied in the implementation of certain ideas, creative inventions, products.

Formation of algorithmic thinking and culture is one of the components of complex training of a modern competent specialist. At the same time, we note that despite the fact that today is the technologicalization of modern life, yet technology is not separated from the social sphere, but is part of it.

Therefore, modern free economic education responds to these trends and contributes to the formation of new professional competencies, for which there is a need to develop new e-textbooks, content management and learning resources, use models for active and «inverted learning», software for interactive learning. creative education. The formation of algorithmic thinking and culture of the digital society includes the most popular technologies - robots, chatbots, tools for using big data that can not be solved without algorithms, algorithmic culture and thinking that lead to the development of digital society, requiring human consciousness and worldview. determining the place and role of economic education as the main megatrend of innovative development of Ukraine (Oleksenko, 2019).

In the context of global changes in the world, this problem acquires not only theoretical but also significant practical significance, because the anthropological dimensions of the interaction of digital man and digital society during the Fourth Industrial Revolution are factors of social stability, economic prosperity, competitiveness, big data. DATA on human well-being.

Conclusions

The essence of philosophical comprehension of new forms of interaction of digital person and digital society is clarified. Modern theoretical approaches to anthropological dimensions of interaction between digital man and digital society due to axiological, structural-functional, synergetic, systemic, informational, praxeological methods and approaches are studied, which allowed to show the complexity of civilization at the present stage and to present the evolution of digital society and its concepts.

We have shown that the old concepts of industrial and post-industrial society are being replaced by new modern concepts and theoretical approaches that correspond to the digital society. In particular, we are talking about the concept of Agile-methodology (flexible methodology) of complexity, which we use to analyze the anthropological foundations of the interaction of digital man and digital society during the Fourth Industrial

Revolution, based on the existence of man as a whole and holistic approach to human and social problems. in the digital society, although who knows what our future will be like (O Rayli, 2018).

Anthropological dimensions of interaction between digital man and digital society during the Fourth Industrial Revolution revealed Agile-methodology (methodology of flexible approaches and adaptive thinking), Data-science-methodology (methodology of information-analytical thinking), Big-data-methodology (methodology of big data use)), nonlinear methodology of complexity, representing a whole set of theoretical and practical knowledge, skills and competencies formed by digital technologies. This was also facilitated by the methodology of convergent and divergent thinking, the methodology of cultural creativity, which provided an opportunity to analyze the interaction of digital man and digital society as complex social, cultural and economic phenomena of our time.

The interaction of man and machine in the digital society, resulting from the introduction of new technologies called «breakthroughs and the impact of the Fourth Industrial Revolution on this type of interaction. Metaphysical measurements of the interaction of digital man and digital society during the Fourth Industrial Revolution show that the digital age on the relationship between man and machine (computers), and also requires a new adaptation of man to the world, technology, the formation of new values and the development of a new type of worldview - information, digital, algorithmic.

The fourth industrial revolution provides an opportunity to form new values, expand knowledge, worldview, gain new progressive experience and competencies through the use of new technologies to form a successful specialist, personality, leader, gain prosperity and well-being through investment in human development in a global transformation (Sosnin *et al.,* 2011).

The formation of algorithmic thinking as a result of the interaction of digital man and digital society, which is considered in the form of a methodology of flexible approaches and adaptive thinking, is analyzed. The creative potential of a digital person helps him to discover new knowledge, create and develop a variety of innovative breakthrough ideas and proposals, to act as a new tool that increases the ability to solve complex problems. In order to open new opportunities in the field of digital activity, it is necessary for a person to master his creative beginnings with the help of new digital skills and ways of thinking.

These considerations determine the interest in determining the metaphysical dimensions of the interaction of digital man and digital society during the Fourth Industrial Revolution and the impact of the Fourth Industrial Revolution on this type of interaction. After all, one of

the components of the digital society is a person's intelligence, a set of his abilities and creative skills, educational and qualification level.

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Administrative and legal regulation of public financial activity

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Abstract

The purpose of the research is the basic characteristics of the management of financial activity in countries such as: France, Germany, United States of America, Great Britain, and Sweden. The organizational structure of financial management bodies was studied and the participation of state legislatures in financial policy was emphasized. Also, a review of materials and methods was carried out based on the analysis of documents for the regulation of public financial activity. The methodology included a comprehensive analysis and generalization of the available scientific and theoretical material, as well as the formulation of relevant conclusions. During the research, the methods of scientific cognition were used: terminological, logical-semantic, functional, system-structural, logical-normative, comparative. It is concluded that the participation of all the higher powers of government is fundamental in the formation and implementation of public policy in the field of finance; this requires a wide range of bodies and institutions exercising control over financial activities; concentration of financial management in a single-

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line ministry, as well as distribution among several ministries and a clear division of powers between financial management bodies, among other aspects.

Keywords: financial activities; management bodies; administrative regulation; legislative bodies; international finance.

Regulación administrativa y legal de la actividad financiera pública

Resumen

El propósito de la investigación son las características básicas de la gestión de la actividad financiera en países como: Francia, Alemania, Estados Unidos de América, Gran Bretaña y Suecia. Se estudió la estructura organizativa de los órganos de gestión financiera y se enfatizó la participación en la política financiera de los órganos legislativos del poder estatal. También, se realizó una revisión de materiales y métodos en base al análisis de documentos para la regulación de la actividad financiera pública. La metodología incluyó un análisis integral y generalización del material científico y teórico disponible, así como la formulación de conclusiones relevantes. Durante la investigación se utilizaron los métodos de cognición científica: terminológico, lógico-semántico, funcional, sistema-estructural, lógico-normativo, comparativo. Se concluye que, la participación de todos los poderes superiores del gobierno es fundamental en la formación e implementación de la política pública en el ámbito de las finanzas; lo que requiere de una amplia gama de órganos e instituciones que ejercen control sobre las actividades financieras; concentración de la gestión financiera en un ministerio de una sola línea, así como la distribución entre varios ministerios y una clara división de poderes entre los órganos de gestión financiera, entre otros aspectos.

Palabras clave: actividades financieras; órganos de gestión; regulación administrativa; órganos legislativos; finanzas internacionales.

Introduction

While examining functioning of the financial system in the society we should emphasize that organization of financial management in our state differs somewhat from the management of the same kind in foreign countries.

In the process of reforming the system of state authorities in Ukraine and their powers it is necessary to find new approaches to functioning of these bodies with the purpose of their optimization, increase of their efficiency, effectiveness, social orientation, etc. A significant importance here belongs to experience of financial activity functioning and management in foreign countries characterized by high economic development, stability of financial policy, growing integration of financial markets in the country, etc.

1. Literature review

Research of theoretical and practical aspects concerning formation of financial systems in foreign countries has found their reflection in works of such scientists as V. I. Ospishchev, who notes that the US budget system is characterized by the stolidity of fiscal and tax relations between the state and its regions. In fact, the states have equal rights in this area with the federation as a whole, so at the federal level and in the states, there are identically named taxes (income tax on individuals and corporations). The most fundamental limitation on state tax rights consists in prohibition on introduction of certain indirect taxes that impede free trade between the states, which is prohibited by the US Constitution (Ospischev, 2008). The author emphasizes that there is practically no direct redistribution of funds between the states. But according to the Constitution the US Congress has the right to finance only the "General Welfare of the USA" which also prevents redistribution of funds between regions. The States may establish any form of taxes, but they cannot prevent interregional economic ties, which leads to equal tax pressure (Ospischev, 2008).

A number of researchers emphasized the importance of studying foreign experience of financial system development as the main condition for improvement of the domestic financial sector of national economy. For example, S.Y. Konoval notes that in recent years the global trend consists in liberalization and globalization of financial systems and, as a result, increased mobility of capital and increased economic risks.

That is why state regulation of financial systems is becoming increasingly important. However, it should be noted that the use of the world experience in financial system state regulation from the standpoint of its adaptation to Ukrainian realities is insufficiently studied (Burdenko, 2011).

Urgency of the article is conditioned by the necessity to reform the system of public authorities in Ukraine, including management bodies of financial activities.

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of financial activity management in foreign countries. The dialectical method of cognition of the facts of social reality is the foundation where formal-legal and, rather, legal approaches are based in many respects. The formal-dogmatic method contributed to development of the author's explanation of the current state, problems, and practical role of legal technologies for further development and improvement of financial activity management in foreign countries. The officially legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of financial activity management in foreign countries.

3. Results and discussion

Turning to a direct consideration of the purpose of our research we propose to focus separately on the structure of financial management bodies in foreign countries and on interaction of financial management bodies with other state bodies. France is one of the countries characterized by stable financial system and effective interaction of state authorities in the sphere of financial activity. It should be noted that France with its bicameral parliament (the Senate and the National Assembly) implements financial laws and the state policy by both chambers of the Parliament and the President of France who has a considerable authority in the sphere of defining financial policy (France Insurance Industry, 2010).

In addition, France does not have a special body to manage finances, that is it does not have the Ministry of Finance as a separate body, and the function to implement the state financial policy is entrusted to the Ministry of Economy, Finance and Budget. This body combines various functions in the sphere of finance, including the following: direct implementation of financial policy in the state, control over various financial transactions, certain control functions in the direct implementation of financial policy performed by lower authorities, etc (Leheza et al, 2018).

A characteristic feature of financial management in France is that this country has a large number of bodies responsible for implementation of direct financial policy and financial control. In particular, a specific feature of financial management in France is that such management is carried out by the highest authorities. This is confirmed by the opinion of N. Y. Melnychuk, who notes that in France in addition to the Ministry of Economy, Finance and Budget, there is a system of administrative inspection which includes three inter-ministerial inspectorates: General Inspectorate of Finance, General Inspectorate of Administration, General Inspectorate of

Social Affairs. In addition to that, the scientist named such bodies as the Commission of Finance, Economics and Planning (National Assembly) and the Commission of Financial and Budgetary Control (Senate), the Commission of Financial Transparency in Political Life, which controls declaration of incomes of participants of political life of the country - mostly state officials (Melnychuk, 2015).

The system of financial management in the USA is interesting from the managerialpoint of view. The highest governing body in the USA is the Ministry of Finance, which is often referred to as the Treasury. Another important body in the field of financial management is the Office of Management and Budget (OMB) under the President, which is responsible for controlling the expenditure side of the budget (Government Finance Statistics Yearbook, 2001).

Availability of the Office of Management and Budget (OMB) under the President emphasizes the role, importance and active participation of the President of the State in the management of financial activity. In the United States a significant role concerning implementation of financial control is assigned to the Government Accountability Office.

On behalf of the chambers and commissions of the US Congress or even individual congressmen, the Government Accountability Office may evaluate effectiveness of government programs as well as activities performed by federal agencies; conduct special surveys and verifications of the validity of product prices; financial and economic aspects of contracts of the Department of Defense. Inspectors of the Government Accountability Office also check activities performed by the executive power inspectors. In some cases, the checks are carried out in coordination with the investigation bodies of the Department of Justice and other bodies entrusted with the relevant authorities (Kyrylenko, 2015).

According to J. Schaffritz activities of the Government Accountability Office consist in carrying out annual inspections of the state of finances of federal agencies as well as in preparing documents and recommendations for the President and the Congress of the USA on the basis of inspections (Shafritz, 2003).

In addition, a specific feature of financial management in the United States is that in this country, financial management is distributed between two government bodies: The Department of Treasury and Customs and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The US government is committed to the autonomy and independence in performing financial and tax policy. Thus, the financial management bodies include several federal bodies - the Government Accountability Office, the Office of Management and Budget which are subordinated to the President of the country There is also an advisory body in the financial management

system, which participates in the procedure of forming basics of financial and economic policy of the country. An important role in the US financial market is given to commodity and stock exchanges and special funds of the United States, which function as independent financial institutions (Leheza *et al.*, 2020).

In our opinion, Germany is another country to be researched. General financial management is carried out at the level of the highest bodies of state authority - the Bundestag. The Ministry of Finance of Germany is the main body determining the state policy in the sphere of finance, it develops fundamentals of financial and tax policy, determines the state budget, its components, it also controls execution of the state budget and other financial processes in the society.

In addition, alongside with the Ministry of Finance, there is the Federal Office of Finance and Administration of the Public Debt, which are accountable to the Federal Ministry of Finance. The first department is engaged in tax inspection of enterprises, taxation of foreign capital investments, problems of eliminating double taxation and the the second administration deals in operations on issue and repayment of loans and financing the budget deficit (Ter-Minassyan, 1995).

One of the main bodies of financial control in Germany is the Federal Chamber of Accounts. Examining activities of this body, V. M. Geyets notes that the legal status of this body is enshrined in the Principal Law of the country. The Federal Chamber of Accounts is responsible for the control over budgetary financing and management of the Federation's economy. The scientist stresses that, when auditing correctness of accounting, the Federal Chamber of Accounts monitors compliance with the laws, budget, and administrative regulations (Geyets, 2012).

In the United Kingdom, financial management is carried out by Her Majesty's Treasury, which combines the functions of the Ministry of Finance and the Ministry of Economy. Her Majesty's Treasury is headed by the Chancellor, and along with him the financial activities are managed by the Paymaster General, the Financial Secretary (the First Deputy Minister), the Parliamentary Secretary and 5 Lords Commissioners. Unlike Ukraine, the UK also has a specialized body, which is responsible for public debt management - the UK debt Management Office. When examining the powers of the UK debt Management Office Yu. Ivanenko defines its following functions: management of government cash balances, operational management of deposits (Leheza et al, 2021).

Administration of other state obligations on guarantees of credits and investments, management of services on purchase and sale of securities, etc. It functions as part of the institutional structure of public debt management in the United Kingdom. Creation of a separate Agency was accompanied by

a clear division of functions of monetary policy and debt management, so that short-term monetary policy decisions did not affect its implementation. (Ivanenko, 2008).

In Sweden, which is a parliamentary monarchy, the main department for state control and accounting is the National Audit Office. Its purpose is to achieve an effective management of financial activity. Its activity is characterized by two directions: conducting annual audits of financial and economic activities of national institutions and enterprises and auditing the of public procurement efficiency. Unlike many other European countries, the Swedish ministries are not empowered to directly manage government agencies. Therefore, the Swedish Constitution allows the Parliament and the Government to have their own public sector control structures (Dikan, 2007).

Conclusion

As a conclusion, we should note that management of financial activities in foreign countries is carried out on the basis of close relations between the highest state authorities, a clear order of public relations in this sphere, impartial distribution of functions among various state authorities in implementation of financial policy, which is, in its in turn, a consequence of an effective financial policy in such countries.

Thus, in foreign countries there is a considerable variety of authorities, which manage and control financial activities, target, and rational use of financial resources in the state. Thus, the main features of financial management in foreign countries include:

1. Active participation of all branches of the state power in formation and realization of state policy in the sphere of finance and implementation of financial policy in the life of the society. In other words, the legislative bodies and the President of the country take an active part in the management of financial activity.
2. Within the limits of their competence, they not only adopt financial laws, develop, and approve main directions of financial policy, but also make the most important financial decisions of the state. For example, the Treasury Department of the USA, the Office of Management and Budget, the Council of Economic Advisers are parts of the presidential administration, and the President is given considerable authority in formulating and implementing public financial policy. A similar situation exists in France, where there is a significant involvement of the Senate, the National Assembly, and the President in managing the financial activities of the state.

3. Existence of an extensive system of bodies and institutions that exercise control over financial activities in the state, financial transactions between various public authorities in the sphere of financial relations (for example, the United States, the United Kingdom).
4. the highest financial public authorities may be concentrated in one ministry, usually the Ministry of Finance (USA, Germany), or they may be distributed among several ministries, such as in France and the United Kingdom.
5. The bodies responsible for financing management in foreign countries envisage existence of a large number of subsidiary bodies, separate autonomous subdivisions, departments, which are responsible for the implementation of a particular area of financial activities (for example, regulation of money circulation, public debt payment, debt policy, tax policy, economic policy, analytical activities in the sphere of finance, accounting and financial reporting, etc.) Diversity of financial management bodies is observed in such countries as Germany and the USA.
6. There is a clear delineation of powers among subsidiary and autonomous bodies in the sphere of financial control. That is, the matter is about a clear delineation of competence among autonomous financial management bodies in accordance with their sphere of influence. For example, clearly delineated are the control functions between the Federal Office of Finance and Administration of the Public Debt in Germany, General Inspectorate of Finance, General Inspectorate of Administration, and the General Inspectorate of Social Affairs in France etc.

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The ratio of electronic and public services: legal aspect

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Abstract

The purpose of the research. *The scientific article is devoted to the coverage of the category of electronic and public services.* Main content. The categories "administrative service", "public service" and "municipal service" are compared. The main approaches to the definition of the concept of electronic services by public administration authorities and the identification of the characteristics of the above concept are considered. Methodology: Consideration of materials and methods based on the analysis of documentary materials for the provision of electronic and public services in Ukraine. Conclusions. Electronic services are a type of public service and are related as a private to the whole, that is, despite the common features of the above services, public services have a large scope of implementation by the population in public administration.

Keywords: public service; administrative service; government service; municipal service; electronic service

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La relación de servicios electrónicos y públicos: aspecto legal

Resumen

El contenido principal del artículo está dedicado al estudio de la categoría de servicios públicos y electrónicos. En este contexto, se comparan las categorías «servicio administrativo», «servicio público» y «servicio municipal», del mismo modo se consideran los principales enfoques para la definición del concepto de servicios electrónicos por parte de las autoridades de la administración pública y se avanza, además, en la identificación de las características de este concepto. Para lograr los objetivos trazados se hizo uso de la metodología documental. Los resultados obtenidos permiten concluir que los servicios electrónicos son un tipo de servicio público y, al mismo tiempo, se relacionan con la dimensión de lo privado, es decir, a pesar de las características comunes de los servicios en general, los servicios públicos tienen un amplio alcance de implementación por parte de la población en la administración pública.

Palabras clave: servicio público; servicio administrativo; servicio gubernamental; servicio municipal; servicio electrónico.

Introduction

The European choice of Ukraine means, in particular, the active introduction of electronic services in the activities of public administration, without which entrepreneurial, scientific and public activities, other forms of public activity of citizens, international relations, etc., cannot develop normally.

Human, his rights and freedoms in Ukraine are recognized as the main value, and the main task of the executive authorities is defined exactly as providing quality services to citizens. The provision of administrative (management) services to the population by executive authorities, including bodies of internal affairs is a priority area of their activities, as it should be required to rethink the role and purpose of the state in society and a radical change in relations between the government and citizens, namely from purely administrative to servicing, in which, as correctly, in our opinion, V.P. Tymoshchuk and A.V. Kirmach note, “citizens are not applicants, but consumers of administrative services” (Tymoschuk, 2005). Thus, one of the directions of democratization of activity of internal affairs bodies is their wider provision of so-called administrative electronic services to individuals and legal entities

1. Literature review

In Ukraine, when using the category of "services", the main emphasis is on legal aspects, and in particular, on the administrative procedure for their provision. This can be explained by the fact that the main ideologists of the introduction of the theory of services in Ukraine are, first of all, representatives of the science of administrative law. Since the main opponents of this theory are also representatives of legal science, who question the very possibility of using the category of "services" on the activities of public authorities and local self-government (Garashchuk, 2001), this has led to especially lively discussions on this issue in jurisprudence.

In English, the term "public services" is used to denote the category of public services. But due to the peculiarities of the translation, just as the term "public administration" is mistakenly translated as "public administration", instead of the term "public services", the term "public services" has first caught on in Ukraine. In the Concept of Administrative Reform in Ukraine, the terms "public services" and "management services" are used in parallel. At the same time, there is no special border between them. Recently, the term "administrative services" has become the most used, since it is rightly considered that the category of "management services" has already its load in economic science. The definition of "administrative" is more apt because it indicates the entity that provides such services - the administration, administrative bodies. In addition, the adjective "administrative" characterizes the power-public (administrative) nature of the activity for the provision of these services (Tymoschuk, 2003).

2. Materials and Method

Research of materials and methods based on the analysis of documentary sources and regulatory legal acts for the provision of electronic and public services. The dialectical method of cognition of the facts of social reality is the basis on which the formal and legal and, rather, legal approaches are largely based. The formal dogmatic method contributed to the development of the author's explanation of the current state, problems, issues and the practical role of legal technologies for the further development and improvement of the provision of electronic and public services. The formal and legal method made it possible to propose directions and types of use of legal technologies as prospects for the provision of electronic and public services.

3. Results and discussion

Public services are all services provided by the public sector or other entities, the responsibility of the public authorities and at the expense of public funds.

According to the characteristics of the entity providing public services, the following types of services are distinguished:

Government services are services provided by public authorities and public enterprises, institutions and organizations. Public services also include services that are provided by non-governmental organizations in the exercise of delegated powers. In this case, the first place for determining the nature of the service is not the direct entity of its provision, but the entity that is responsible for the provision of this service, and the source of funding for the provision of this type of service, i.e. the type of budget.

Thus, the term "government" is quite common, but it does not define the specifics of the institution, being considered.

Municipal services are services provided by local governments, public utilities, institutions, and organizations. The term "municipal" is also not fully defined, since it does not take into account one of the main actors in the provision of relevant services (Kolomoyets, 2002).

Government and municipal services together constitute the scope of administrative (public) services.

The Concept of Administrative Reform in Ukraine proposes such a new function of the executive power as the provision of "management services", and "management services" are defined as "services on the part of executive authorities, which are a necessary condition for realization of rights and freedoms of citizens, in particular, registration, licensing, certification, etc.

To date, this issue has revealed somewhat opposite approaches, and scientists have not yet developed a generally accepted interpretation of the concept of "management services".

Thus, V. Averyanov, confirming the legitimacy and terminological definition of the concept of "services" on the part of the executive authorities, draws attention to a certain inappropriateness of the characterization of these services as "management". But he focuses attention not on the "power-organizational" aspect of the relevant actions (since "management" is a power-organizational influence), but on the fact that they are carried out by public (government and self-governing) administration bodies. That is, the most appropriate term is "administrative services (Averyanov, 2003).

The scientist proposes an explanation that the specified terminological replacement is based on the recognition of the obvious fact that state power is the implementation of not only the powers that bind a citizen, but also the fulfillment of certain responsibilities of the state to the citizen, for the state of which (performance) it is fully responsible to him. The number of such responsibilities is the main feature of a true democratic state (Averyanov, 2002).

In particular, I. Koliushko and V. Tymoshchuk consider it expedient to use the definition of "administrative services", drawing attention to the fact that the so-called "broad" understanding of the concept of management services is actually identical to the concept of "public services", which actually also covers services for the provision of which state authorities and local governments are indirectly responsible, although directly providing them (for example, medical care) (Tymoschuk, 2003).

The introduction of the concept of "administrative services" significantly affects the rethinking of the content of the subject of administrative law and gives grounds to define this category through the appropriate legal relationship.

Pisarenko G.M. notes that an administrative service is a legal relationship arising from the implementation of the subjective rights of an individual or legal entity (at their request) in the process of publicly power activities of an administrative body to obtain a certain result (Pisapenko, 2006).

Such well-known scientists as V. K. Kolpakov, A. V. Kuzmenko, Y. V. Ischenko, V. P. Chaban give in a broad and narrow concept of administrative services, namely:

> Administrative service - 1) legal registration by a subject of public administration of the results of the consideration of a case that arose at the request of a physical, legal or other collective person for the exercise of their rights, freedoms, legitimate interests; 2) the result of the exercise of power by the authorized entity, in accordance with the law, ensures the legal formalization of the conditions for the exercise of rights, freedoms and legal interests by individuals and legal entities upon their application (issuance of permits (licenses), references, certificates, registration, etc.) (Kolpakov, 2010, p. 14).

In the report prepared by the Main State Service in Ukraine on its official website, the following meaning of the category "administrative service" is given, this is the activity of the administrative body carried out at the request of a private (natural or legal) person and its result on the legal registration of the rights, freedoms and legitimate interests of an individual (for example, issuance of permits, licenses, references, certificates, registration, etc.), as well as the performance of duties.

Let us consider the coverage of the category of administrative services in the legal sources of Ukraine.

According to the Concept for the development of the system for the provision of administrative services by the executive authorities, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 15.02.2006 No. 90-p, an administrative service is a result of the exercise of powers by an authorized entity, in accordance with the law, provides legal registration of the conditions for the exercise of rights by individuals and legal entities, freedoms and legitimate interests upon their application (issuance of permits (licenses), references, certifications, registration etc.) (Law of Ukraine, 2006).

In accordance with the Resolution of the Cabinet of Ministers of Ukraine dated 17.07.09 No. 737 "On measures to streamline government, including administrative services", an administrative service is a government service, which is the result of the implementation of powers by the entity to adopt, in accordance with the regulatory and legal acts on the application of an individual or legal entity an administrative act aimed at the implementation and protection of its rights and legitimate interests and/or for the performance by a person of obligations determined by law (obtaining a permit (license), certificate, reference and other documents, registration, etc.) (Law of Ukraine, 2009).

The draft of the Concept of reforming public administration in Ukraine defines an administrative service as aimed at providing (legal registration) conditions for the realization of subjective rights, fulfillment of duties of an individual or legal entity, a "positive" public service activity of administration body, is carried out at the request of this person (Leheza *et al*., 2021).

Indicative of the imperfection of modern rule-making activity is the Law of Ukraine "On Administrative Services" dated 06.09.2012 No. 5203-VI, in which the definition of administrative services is given then in the preamble, namely: "administrative service is a result of the exercise of powers by the subject of providing administrative services at the request of an individual or legal entity, aimed at the establishment, change or termination of the rights and/or obligations of such person in accordance with the law" (Law of Ukraine, 2012). In our opinion, in accordance with the rules of lawmaking practice, in the preamble it is necessary to note not the definition of concepts, but the coverage of the main content of the law (Leheza *et al.,* 2018).

Agreeing with the scientist Leheza E.A., who understands under an administrative service - the activities of public administration bodies that are regulated by legal acts to consider an application of an individual or legal entity for the issuance of an administrative act (permission (license), reference, certificate, etc.) aimed at ensuring its rights and legitimate interests and/or fulfillment by a person of certain legal obligations (Leheza *et al*., 2021).

Having considered those provided by the executive authorities in Ukraine, we will give the author's definition of the concept of "electronic services".

Unfortunately, there is no definition of the term "electronic services" in the current legislative regulations of our state, so let's turn to the study of the views of scientists on this subject (Leheza *et al.*, 2020).

"Electronic services are various types of tangible and intangible services in electronic form using information and communication technologies (hereinafter - ICT), including the Internet" (Vyshnyakova, 2007). Or, electronic services are understood as government and municipal services, as well as information services, for the provision of which ICTs are used (Zagaetska, 2010).

Or, electronic services are understood as state and municipal services, as well as information services, for the provision of which ICT is used (Zagaetska, 2010).

According to the scientist Kusplyak I.S., it is more appropriate to use the term "electronic services", that is, in digital form, associated with the use of document management (Kusplyak, 2012).

Electronic services are services provided using the "Electronic Government" system due to the fact that "one of the priority tasks for the development of the information society is the provision of information and other services to citizens and legal entities through the electronic information system "Electronic Government", which provides information interaction of executive authorities with each other, with citizens and legal entities on the basis of modern information technologies "(Law of Ukraine, 2003).

Thus, according to Tishchenkova I.A. an electronic service means the activity of public administration bodies regulated by legal acts using modern information communication technologies for considering an application of an individual or legal entity for the issuance of an administrative act (permit (license), reference, certificate, etc.) aimed at ensuring his rights and legitimate interests and/or for the performance by a person of obligations specified by law. (Tishchenkova, 2015).

Conclusions

Thus, electronic services are a type of public service and are related as a private to the whole, that is, despite the common features of the above services, public services have a large scope of implementation by the population in public administration.

The definition of public services is proposed as the activity of public administration bodies regulated by public law to satisfy public interest in considering an application of an individual or legal entity for the issuance of an administrative act (decisions, permission, license, reference, act, certificate, etc.) aimed at ensuring his rights and legitimate interests and/or in order to fulfill the obligations determined by law by a person through funding from public funds.

The expediency of systemic consideration of services with the allocation of elements in the system of public services, which represent direct types of public services (administrative, municipal, social, government, housing, and utilities, etc.), the links between them (vertical - between different types of public services) has been substantiated.; horizontal - within one type of public services) and the subjects that provide public services.

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Criminal Procedure and Forensic Aspects of Mutual Legal Assistance between States in Criminal Matters: Experience of Ukraine and the Republic of Azerbaijan

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Abstract

This article, through the description of real experiences, reveals some of the obstacles that arise when applying the international, national, and domestic laws of the Republic of Azerbaijan and Ukraine in the fight against crimes of an international character, and offers alternatives to address them. International legal assistance between States in criminal cases is provided in accordance with international agreements. The instruments of cooperation in the field of mutual legal assistance between States in criminal matters are well known to European judges and prosecutors. However, experience shows that post-Soviet countries have been reluctant to use mutual legal assistance in criminal matters because of the practical problems that often arise. The solutions to these problems are not only found in national or international legal texts and regulations, directives, or conventions. It is concluded that legal assistance among States in criminal cases is essential to extradite offenders facing criminal charges or to execute court sentences, to extradite persons, to transfer convicted persons to serve their sentences and to seize, search for and confiscate the proceeds of crime.

Keywords: criminal law; criminal procedural law; international criminal law; comparative law; constitutional law.

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Aspectos procesales y forenses de la asistencia jurídica mutua entre Estados en materia penal: La experiencia de Ucrania y la República de Azerbaiyán

Resumen

Este artículo, mediante la descripción de experiencias reales, revela algunos de los obstáculos que surgen al aplicar las leyes internacionales, nacionales e internas de la República de Azerbaiyán y Ucrania en la lucha contra los delitos de carácter internacional, y ofrece además alternativas para hacerles frente. La asistencia jurídica internacional entre Estados en casos penales se presta de conformidad con los acuerdos internacionales. Los instrumentos de cooperación en materia de asistencia jurídica mutua entre Estados en materia penal son bien conocidos por los jueces y fiscales europeos. Sin embargo, la experiencia demuestra que los países post soviéticos se han mostrado reacios a utilizar la asistencia jurídica mutua en materia penal debido a los problemas prácticos que suelen surgir. Las soluciones a estos problemas no solo se encuentran en los textos legales y reglamentos, directivas o convenios nacionales o internacionales. Se concluye que, la asistencia jurídica entre los Estados en las causas penales es esencial para extraditar a los delincuentes que se enfrenten a cargos penales o, ejecutar sentencias judiciales, para extraditar a personas, para trasladar a los condenados a cumplir sus condenas y para incautar, buscar y confiscar el producto del delito.

Palabras clave: derecho penal; derecho procesal penal; derecho penal internacional; derecho comparado; derecho constitucional.

Introduction

The relevance of the research is since in any democratic state the highest priority task in ensuring the rights and freedoms of man and citizen, stipulated by the constitution, is the effective fight against crime.

This task is complicated by the processes of globalization of the world community, particularly economic integration of states (for example, the creation of free trade zones in Europe), cooperation in solving environmental problems (for example, global warming and inevitable climate change), development of transport infrastructure (for example, ensuring fast and quality transportation between states), and rapid development of high technology and scientific advances (for example, the invention of vaccines to counter pandemics). These processes generate a parallel increase in crime on an international scale.

We are talking, above all, about the creation of organized crime, arms trafficking, drug trafficking, terrorism, and human trafficking, which calls for states to join forces and coordinate common goals in their practical anti-crime efforts (Reza Vanaki *et al*., 2021). But at the same time with the obvious advantages of international cooperation in the provision of mutual legal assistance between states in criminal matters, with the high rate of harmonization of criminal procedures in different states, the problem of different understanding of both the essence and the specificity of the procedural actions in different systems of law arises (Epikhin *et al*., 2020).

1. Literature Review

Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 are important for Ukraine and Azerbaijan Republic in studying the criminal procedural and forensic aspects of mutual legal assistance between states in criminal matters, as well as in the constitutions of these states and their national legislation.

2. Methods

The methodological basis of the study is general and special methods of scientific knowledge (statistical, formal-logical, comparative-legal, and structural-logical method), which allowed to reveal the main criminal procedure and criminological aspects of mutual legal assistance between states in criminal cases in Ukraine and in the Republic of Azerbaijan. Methodological basis of the study is a system of general scientific and special methods to obtain its objective and reliable results.

Specificity of the purpose and tasks of the research caused the need to use the following methods: formal logic, dialectical, comparative-legal, formal-logical, system-structural and others. Methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction) - for detailed awareness of the content of the issues under study. The dialectical method was used during the research of categories, in particular legal assistance of international nature between states in criminal cases. The use of the comparative legal method allowed to determine the essence, content, and correlation of the national legislation of Azerbaijan the Republic and of Ukraine and international legislation, which is applied by these states in the established order, specialized laws and bylaws that regulate the issues of legal assistance between states in criminal cases.

System-structural method made it possible to systematize national and international normative legal acts and bylaws, to study and analyze their norms about our study, to analyze criminal procedure and criminalistics aspects of legal assistance between states in criminal cases on the example of the Azerbaijan Republic and of Ukraine.

3. Result and Discussion

Results of the research: statistical data on the fight against terrorism in the Republic of Azerbaijan as an example of successful international cooperation in the provision of legal assistance between states in criminal cases, a comparative analysis of the national criminal and criminal procedural legislation of the Republic of Azerbaijan and Ukraine, as well as examples of international legal acts in the specified area are presented in the Republic of Azerbaijan and Ukraine.

The practical significance of the results of the analysis of national and international legislation in Azerbaijan Republic and Ukraine is that the examples given in the article will be useful first of all in the process of law enforcement bodies' system reformation, which is taking place in Ukraine, because both practical workers and scientists are involved in this process, and international legal acts, practice of European Court of Human Rights, and also international experience of law enforcement bodies are implemented in national legislation. Ukraine would benefit from the experience of the Republic of Azerbaijan in effectively combating crime through international cooperation in criminal matters. The analysis and generalized conclusions of the article can also be used in the generalization of the judicial practice, decisions of judicial and other state bodies, used in the preparation of scientific comments to the criminal code, criminal procedure and other codes and laws which regulate the issues of mutual legal assistance between states in criminal matters.

The problem of money laundering remains particularly acute, as evidenced by the initiative of the European Commission, announced in July 2021, to create a new agency for the supervision of the turnover of illegally gained money, which will enable, first, to cut off the money flows of terrorist financing. States, in particular, must commit themselves to treat money laundering as a criminal offence, assist in investigations and take preliminary actions (freezing of bank accounts, seizure of property to avoid concealment, confiscation of funds and income obtained by illegal means or property whose value exceeds the value of the income).

A very commission of crimes not limited to the territory of one state, or having in its composition a foreign element, raises the problem of conflict of jurisdictions of different states and the effect of the extra-territorial nature

of the criminal procedural law of a foreign state in the sphere of national jurisdiction. In this connection: "it becomes important to assess the present situation of the international legal system in the field of legal cooperation in criminal matters in order to create new provisions and improve the application of existing ones" (Report of The Intergovernmental Expert Group Meeting, 1998). From the practical point of view, the experience of the Republic of Azerbaijan is useful for Ukraine in its anti-corruption policy.

In particular, the State program for fighting corruption for 2004-2006, the adoption of the new National strategy for increasing transparency and fighting corruption in 2007, and the action plan for 2007-2011 constitute important progress in the criminalization of corruption in that country. An important role in the successful fight against crime in the Republic of Azerbaijan is played by the legal assistance in criminal cases that is provided in accordance with the concluded treaties between this state and the Kyrgyz Republic, the Republic of Uzbekistan, and the Russian Federation. Active and passive bribery in the public sector, trading in influence, intangible benefits and bribery through intermediaries have been criminalized in accordance with the relevant international standards.

The Republic of Azerbaijan is also actively combating the global problem of terrorism (Azerbaijan in the world community, 2021). In the framework of wide social, economic, and legal reforms carried out to improve the activity of the Ministry of Interior, in accordance with international norms and standards, with participation of legal experts from Germany, England, France, Spain and other European countries a number of normative acts and conceptual documents defining legal basis of activity of the Republic of Azerbaijan in the field of fight against crime were developed. In 1992 the Republic of Azerbaijan joined the International Criminal Police Organization, Interpol.

From that moment the foundations of direct cooperation with law-enforcement agencies of foreign countries were laid. This process intensified relations of the Republic of Azerbaijan with such authoritative organizations as the UN, the Council of Europe, which specialize in the field of law enforcement agencies. At the same time, the country's economic and social situation was developing dynamically, which led to an increase in the inflow of foreign investors into Azerbaijan.

In this regard, there was a need to strengthen bilateral and multilateral legal relations with relevant authorities of these countries, including those related to the fight against crime. During the last 20 years 48 bilateral and 27 multilateral interagency and intergovernmental agreements, memorandums and protocols have been signed by the Ministry of Internal Affairs of the Republic of Azerbaijan and respective organizations from about 40 countries. The subject of the mentioned international legal documents is the exchange of information and experience, cooperation in

the field of police education and training, joint investigative measures based on cooperation in the fight against various types of transnational crime, illicit trafficking in drugs, psychotropic substances, weapons, terrorism, human trafficking, illegal migration, smuggling (Azerbaijan in the world community, 2021).

Within the framework of such international and regional organizations as OSCE (Organization for Security and Cooperation in Europe), "Organization for Democracy and Economic Development - GUAM" NATO (North Atlantic Treaty Organization), BSEC (Organization of the Black Sea Economic Cooperation), ECO (Organization of Economic Cooperation) OIC (Organization of Islamic Conference), CIS (Commonwealth of Independent States) special attention is paid to activities of the Ministry of Interior of the Azerbaijan Republic in this direction (Azerbaijan in the world community, 2021).

As for Ukraine, the basis for international cooperation in criminal matters are acting bilateral and multilateral treaties, consent to the binding of which was confirmed by the Supreme Council of Ukraine in the prescribed manner. Bilateral agreements allow considering more fully the nature of relations between the two states, their interests on each specific issue.

In this regard, the most widespread are bilateral agreements on such issues as avoidance of double taxation, legal assistance in tax cases, legal assistance in criminal proceedings, extradition of offenders, transfer of convicted persons to serve the sentence in the country of which they are citizens, etc.

Among the multilateral treaties we should mention the European conventions on criminal proceedings, which are important both for the Republic of Azerbaijan and Ukraine, namely: European Convention on Extradition of Offenders and its two additional protocols (European Convention on the Extradition of Offenders, 1957), the European Convention on mutual legal assistance in criminal matters with an additional protocol to it , European Convention on the Transfer of Proceedings in Criminal Matters (European Convention on the Transfer of Proceedings in Criminal Matters, 1972), Convention on the Transfer of Sentenced Persons and its Protocol (Convention on the Transfer of Sentenced Persons, 1983), European Convention on the Supervision of Probationers and Parolees (European Convention on the Supervision of Conditionally Sentenced, 1964), Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (Convention on Laundering, 1990), in addition, it is necessary to mention the European Convention on the international recognition of judgments in criminal cases (European Convention on the international recognition of judgments in criminal cases, 1970).

In addition, it should be mentioned that within the framework of the Commonwealth of Independent States, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993) and the Protocol to the Convention (1997) are in force. In the framework of the UN - the Convention against Transnational Organized Crime (2000) (Convention against Transnational Organized Crime, 2000).

These international treaties establish a uniform pattern of law enforcement and judicial cooperation in the fight against crime by all European states.

It is also worth mentioning the International Criminal Court, which was established at the Diplomatic Conference of Plenipotentiaries held in Rome under the auspices of the United Nations on 15-17 July 1998.

As to the previously mentioned international treaties, the treaties on legal assistance in criminal matters (which contain the whole range of issues regarding cooperation of competent authorities in criminal matters) should be attributed to such treaties. Such treaties were mostly concluded during the existence of the Soviet Union, but, despite this, some of them are still valid today. At the same time, it should be noted that the practice of concluding international treaties follows through the conclusion of treaties on cooperation between states regarding certain types of legal assistance: on legal assistance in criminal cases, on extradition of criminals, on the transfer of convicted persons. As of today, the total base of international treaties in force in Ukraine consists of 18 multilateral and 37 bilateral international treaties in this field.

It should be noted that it is precisely the existence of an international treaty that is a prerequisite for taking decisions on the extradition of offenders, and on the transfer of convicted persons. Thus, in accordance with article 10 of the Criminal Code of Ukraine, foreigners may be extradited for prosecution and trial or transferred to serve a sentence, if such extradition or transfer is provided for in international treaties of Ukraine (Criminal Code of Ukraine, 2001).

The same provision is specified in Article 12 of the Criminal Code of the Republic of Azerbaijan, according to which foreign citizens and stateless persons who have committed a crime outside the Republic of Azerbaijan may be held criminally liable under the present Code in cases where the crime is directed against citizens of the Republic of Azerbaijan, the interests of the Republic of Azerbaijan, as well as in cases stipulated by an international agreement of the Republic of Azerbaijan, if they have not been convicted in a foreign state (Criminal Code of the Republic of Azerbaijan, 1999).

In connection with the processes of world globalization, which also affects the fight against crime, the question arises of how a person who has committed a crime and is hiding in another state can be held criminally

responsible for the crime he has committed. There are several ways to resolve this issue, the first of which is the extradition (or extradition) of that person.

In Ukraine, the question of extradition is resolved when the territorial principle (the place where the crime was committed and where the offender is located) is combined with the citizenship of the person concerned, that is, the principle of citizenship is decisive for extradition. According to Article 25 of the Constitution of Ukraine, a citizen of Ukraine cannot be expelled from Ukraine or extradited to another country (Constitution of Ukraine, 1996). The principle of nationality is also reflected in the Criminal Code, which provides those Ukrainian citizens and stateless person permanently residing in Ukraine who have committed crimes outside the borders of Ukraine may not be extradited to a foreign State to face criminal charges or to stand trial (Article 10, clause 1 of the Criminal Code of Ukraine) (Criminal Code of Ukraine, 2001).

It should be noted that non-extradition of one's own citizens does not mean that they remain unpunished. Each state, at the request of another state, is obliged to initiate criminal proceedings or to take over, in accordance with its national legislation, the criminal prosecution of its nationals who are accused of committing a crime in the territory of another state. At the same time, this is also another way of bringing a person to justice - the transfer of criminal proceedings.

Regarding the above procedure with the European states, the legal basis is the European Convention on the Transfer of Proceedings in Criminal Matters, 1972, and regarding the CIS countries - the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, in 1993 (the so-called Minsk Convention) (Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, 1993) and some international treaties, which we mentioned earlier. As an example, the Treaty between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993).

There is also a third way of bringing a person to criminal responsibility, which should be mentioned in our study - the transfer of execution of a sentence, by which the person was convicted on the territory of another state for a committed crime but escaped punishment by fleeing to the state of his citizenship. This possibility is provided for by the European Convention on the International Recognition of Criminal Judgements, 1970 and the Additional Protocol to the Convention on the Transfer of Sentenced Persons, 1997. (Article 2 of the Protocol), as well as the transfer of the execution of a sentence based on the European Convention on the Supervision of Probation or Parole Offenders, 1964.It should be noted that the legislation in Ukraine identifies two central bodies for the implementation of the above-mentioned European conventions in the field of criminal proceedings (in

particular, on the transfer of proceedings in criminal cases; on laundering, detection, seizure and confiscation of proceeds of crime) (Convention on Laundering, 1990): The Ministry of Justice of Ukraine - at the stage of criminal proceedings and the Prosecutor General's Office of Ukraine - at the stage of pre-trial investigation.

In addition, the Ministry of Justice acts as a central body for the implementation of the European Convention on the International Recognition of Criminal Judgements, the European Convention on the Supervision of Probation or Parole Offenders, and the Convention on the Transfer of Sentenced Persons and its Protocol.

Apart from the bilateral level, Ukraine also cooperates at the regional level, which can be explained by the coincidence of interests and the nature of relations between the countries of a particular region. Thus, Ukraine is a member of the Council of Europe and the Organization for Security and Cooperation in Europe.

The third direction covers cooperation within the framework of universal international organizations and, first, it concerns the United Nations and its specialized agencies, as well as the international criminal police organization (Interpol). Universal and regional international organizations, regardless of their scale and influence, continue to play an important role in combating new global threats, such as transnational crime.

Thus, international organizations, along with assistance in eliminating and preventing threats, create ample opportunities to protect the interests of Ukraine and the Republic of Azerbaijan in global politics. A scientific analysis of the topic, relevant both theoretically and practically, was conducted.

Based on the comparative analysis of the national normative and legal as well as international acts, adopted and used by Ukraine and the Republic of Azerbaijan as provided by law, we can conclude that we can consider the provision of mutual legal assistance between states in criminal cases as a form of interaction between state authorities and respective officials with the respective competent authorities and officials of foreign states, as well as international organizations.

This form of interaction is carried out in the established criminal procedural legislation, both the States themselves interacting with each other, and international legal acts, bilateral and multilateral treaties on mutual legal assistance between States in criminal matters. In its content, it is a joint procedural action of foreign states to collect evidence and its verification, the implementation of criminal prosecution and other forms of assistance for the proper solution of a particular criminal case.

An important aspect of international cooperation, which is the cooperation of law enforcement agencies of different states, is the concluded treaty on assistance in the investigation of criminal offences, but cooperation between countries does not always consist in signed treaties but can also be based on the principle of reciprocity, which is one of the basic principles of international law.

The fundamental characteristic that distinguishes international legal assistance in criminal proceedings from other forms of international legal cooperation is the fact that in the implementation, the requesting State (the requesting party) partially transfers its competence to resolve criminal proceedings under its jurisdiction to another State (the requested party). The transfer of competence includes the following recognition of evidence obtained under the rules of foreign criminal procedure law as admissible and compliant with the national legislation of the requesting State (the requesting party).

In accordance with the Article 1 of the European Convention on Extradition of Offenders and the relevant articles of bilateral treaties on the extradition of offenders, States are obliged to extradite to one another person's present in their territory and wanted by the competent authorities of the State in whose territory the offence was committed for the purpose of prosecution or to enforce a sentence of conviction which has entered into legal force (European Convention on the Extradition of Offenders, 1957).

Ukraine has ratified that Convention and, in addition, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, as well as Ukraine's bilateral treaties on extradition and legal assistance, which contain provisions on extradition, provide grounds for extradition. Extradition is carried out in connection with offences punishable by at least one year's imprisonment or a more severe penalty.

Extradition for the purpose of enforcing a sentence is generally carried out if the person is sentenced to imprisonment of at least six months or a heavier sentence. However, the lower limit of the sentence must be four months. Thus, extradition is the process of surrendering an offender under international law to another state for the imposition of a criminal penalty. The conditions under which a State may refuse to extradite offenders are also provided for in the relevant articles of the European Convention and in bilateral international treaties (European Convention on the Extradition of Offenders, 1957).

Ukraine has signed the above-mentioned agreements on extradition of criminals with such countries as Azerbaijan, Poland, Latvia, Lithuania, Estonia, Moldova, Georgia there are also agreements of our state concerning the European Convention on mutual legal assistance in criminal matters with the states that are members of the Council of Europe: Austria,

Germany, Turkey, Switzerland, Italy, Spain. Currently there are no such agreements between Ukraine and the USA and Ukraine and Canada.

Republic of Azerbaijan has extradited 12 persons suspected of inciting religious hatred and committing terrorist acts, including 3 members of the terrorist organization Al Qaeda, 3 activists of Misir Islam Jihadi, 5 members of Al-Jamaa Al-Islamiya and 1 member of Caucasus Islam Army, based on the petitions sent by the cooperating countries. Moreover, 11 terrorists were detained in Azerbaijan and handed over to the special services of other countries, and six terrorists were arrested in Great Britain, the Netherlands, Germany, Pakistan and the United Arab Emirates based on the information of the special services of Azerbaijan.

The national security agencies of Azerbaijan revealed 14 activists of terrorist organization "Jeyshullah", 6 members of "Hizbut-Tahrir" and 1 member of "Al-Jamaa Al-Islamiya". Because of the links with terrorist organizations the activity of branches of foreign organizations in Baku – "International Humanitarian Appeal" from the United Arab Emirates, "Al-Haramain" from Saudi Arabia, "Revival of Islamic Heritage" and "Fund for the Sick" from Kuwait, "International Charitable Foundation" from USA and "Qatar" organization from Qatar was suspended (International Convention on the Elimination of all Forms of Racial Discrimination, 2008).

Three employees of these organizations were handed over to Egypt and 23 employees were deported from the territory of the Republic of Azerbaijan. During last year's 33 foreigners directly connected with international terrorism were extradited. Only after September 11, 2001, events 5 citizens of Egypt and 1 citizen of Uzbekistan were extradited to terrorist organizations "Al-Qaeda", "Al-Jamaa Al-Islamiya" and "Egyptian Islamic Jihad".

Activity of the branches of 7 charitable organizations in Baku was suspended due to links with terrorist organizations (Reports submitted by States, 2007). On the examples of the Republic of Azerbaijan further development of the institute the extradition of criminals will take place on the basis of what he actually constitutes combining the sovereign rights of the state with human rights and existing one's difficulties in applying the principle of double criminal responsibility.

The development of bilateral interstate relations with other countries, accession of Ukraine and the Republic of Azerbaijan to multilateral international treaties contributes both to improvement of cooperation between law enforcement agencies of different countries in investigation, prosecution, and trial of criminal cases, and to increase the global status of Ukraine and the Republic of Azerbaijan as European states.

It should also be noted in our study about the existing contractual legal framework of bilateral relations between the Republic of Azerbaijan and Ukraine.

As of June 2021, 141 international agreements were signed between Ukraine and the Republic of Azerbaijan, of which: 64 interstate and intergovernmental, 41 interdepartmental, 14 political and 20 other documents.

Cooperation of states, including Ukraine and the Republic of Azerbaijan in the field of combating criminal offences develops at three levels: bilateral, regional, and universal (general), at each of them international agreements (international treaties) on cooperation are concluded.

The basic political documents between Ukraine and Azerbaijan are the Treaty of Friendship and Cooperation of 09/12/1992 and the Agreement of Friendship, Cooperation and Partnership of 16/03/2000, which define the main directions, forms, and methods of cooperation between states, including in the field of combating crime. Declaration on Friendship and Strategic Partnership between Ukraine and the Republic of Azerbaijan dated 22/05/2008 defines the level of cooperation between the states as strategic.

The key legal acts of Azerbaijani Ukrainian relations are: Agreement on economic cooperation, agreements on air traffic, on cooperation in customs affairs, military-technical, scientific and technical cooperation, cooperation in the field of tourism, communications, on mutual recognition and equivalence of educational documents and academic titles, youth policy and sports, visa-free travel of citizens, the principles of cooperation in the oil industry, cooperation in the field of culture and art, cooperation in the field of education, etc.

The Republic of Azerbaijan, as an Agreement between the Republic of Azerbaijan and Ukraine on the transfer of persons sentenced to imprisonment for further serving their sentence (1998), the Convention between Government of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine the on the avoidance of double taxation and prevention of tax evasion on income and property (2000), Agreement between the Government of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine on cooperation in the field of combating economic and financial violations (2000), Agreement between the Government Of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine on cooperation in combating smuggling and violation of customs regulations, as well as illegal circulation of ammunition, explosives, drugs, psychotropic substances and precursors (2004) (Legal framework between Ukraine and Azerbaijan, 2021).

In both the Republic of Azerbaijan and Ukraine the legal basis for international cooperation in criminal matters is primarily the Constitutions of these countries, as well as international treaties, consent to which is legally binding, other laws and regulations of these states. It should be

noted that in some cases international interdepartmental agreements on cooperation in the fight against crime contain some disadvantages. One of the reasons for this is that in contradiction with the current norms of law enforcement agencies do not register the named contracts in the prescribed manner.

The international cooperation in criminal matters between States is, on the one hand, an effective method of combating crime, but, on the other hand, implies several problematic aspects that need to be addressed immediately within the legal framework. Thus, one of the main directions of international cooperation in the fight against crime is international cooperation in criminal proceedings.

Today, unfortunately, there is not a single international treaty of Ukraine, the title of which includes the phrase "international cooperation in criminal proceedings. This is primarily since among our domestic legal scholars there is no unified approach to defining the content and basic principles of international cooperation in criminal proceedings. At the same time, the full implementation of tasks of criminal proceedings is sometimes impossible without involvement of employees of operational units, acting based on the instructions of an investigator, as subjects of international cooperation.

Exploring the theme of international cooperation in criminal proceedings, Karaseva (1999) singles out the following main directions: 1) mutual observance of immunity rules established by international law; 2) development and observance of international standards, guarantees of human rights and freedoms, to some extent involved in criminal proceedings; 3) legal assistance (performance of operative-search and procedural actions by mutual consent etc.); 4) extradition; 5) transfer for serving the sentence or compulsory execution of a criminal proceeding; 6) mutual assistance in criminal proceedings.

Unfortunately, the legal status of employees of operational units involved in the implementation of international legal assignments in the current Criminal Procedure Code of Ukraine is not regulated (Criminal Procedure Code of Ukraine, 2012). These provisions are not enshrined in the Criminal Procedure Code of the Republic of Azerbaijan (Criminal Procedure Code of the Republic of Azerbaijan, 2000).

On the other hand, it is important to note positive aspects of cooperation between states in the provision of legal assistance in criminal cases. Thus, the Ministry of Justice of Ukraine has recently concluded several agreements on cooperation in the field of forensic examinations with the Ministries of Justice of the Republics of Azerbaijan, Belarus, Uzbekistan, and Georgia.

This certainly contributes to the exchange of information, implementation of measures regarding scientific developments and expert findings, as well as approbation of methods of forensic research and technical means. The

mentioned contractual relations in the field of international cooperation of forensic institutions envisage exchange of information on the topics of scientific research developments, exhibitions of modern forensic equipment, direct exchange of scientific and reference materials and documentation (including information and reference data in electronic versions prepared in accordance with international standards).

One of the most important components of international cooperation in the field of forensic examination is carrying out forensic examinations on behalf of another state and engaging foreign specialists to carry out forensic examinations in Ukraine. According to Article 22 of the Law of Ukraine "On Forensic Expertise", in case of performing forensic examination upon request of a respective body or person of another state with which Ukraine has an agreement on mutual legal assistance and cooperation, the legislation of Ukraine shall apply, unless otherwise provided by the said agreement. Payment for the cost of forensic examination shall be made on agreement between the client and the executor of the forensic examination.

Article 23 of the Law of Ukraine "On Forensic Expertise" provides for attraction of specialists from other states for joint performance of forensic expertise. When necessary, heads of specialized institutions and departmental services carrying out forensic examinations shall have the right with the consent of the body or person who assigned the expert examination to include leading experts from other states in the composition of expert commissions.

Such joint expert commissions shall conduct forensic examinations in accordance with the norms of Ukrainian procedural legislation. The payment to foreign specialists for their participation in forensic examination and reimbursement of other expenses associated with its conduct shall be made by agreement between the parties. International cooperation of Ukraine with other states in the field of forensic expertise is the positive factor that accelerates its progressive development (Law of Ukraine "On Forensic Expertise", 1994). At the same time, it should be noted that the Law of the Republic of Azerbaijan "On forensic activities" does not provide for international cooperation in this field.

Conclusions

Crime in its national and transnational scales destabilizes international relations, influencing politics, economics, mass media, public administration, judicial authorities, skillfully using insufficiently effective international legal measures and imperfect mechanisms of counteraction to criminal offenses available in some countries.

From the first years of its independence our state began to actively enter the sphere of international cooperation, one of the elements of which are common actions with foreign states to combat criminal offenses. International cooperation in combating offenses does not exist by itself. It is a component of international relations, and even those states that do not have close political and economic contacts, as a rule, do not neglect contacts in the field of combating offenses.

As we have outlined earlier, cooperation between States in criminal matters takes place in order to achieve the goals of justice, both during the investigation and trial of a criminal case and after the entry into force of a court decision (sentence) and involves many aspects of criminal procedure and forensic nature. The forms in which this kind of cooperation between States can be organized vary in form and content.

Of course, the main of them are the provision of legal assistance in criminal cases, which consists primarily of procedural actions, which reflects the essence of the process of investigation and judicial consideration of criminal cases, during which there is a need to collect evidence, including, outside of one state, by interviewing the accused, victims, witnesses, receiving expert opinions, conducting searches, judicial examination, seizure and transfer of documents, personal delivery of documents and their forwarding.

It should also be noted that legal assistance between States in criminal cases is essential for extraditing criminals to face criminal charges or enforcing court judgements, for extraditing criminals, for transferring convicted persons to serve their sentences and for seizing, searching for and confiscating the proceeds of crime.

At present, the process of development of Ukraine as an independent, sovereign, democratic state governed by the rule of law continues. This process is undoubtedly impossible without the creation of an integral effective state system to protect the rights and freedoms of citizens and general civil interests.

Of particular importance for such development is the intensification of lawmaking activities to improve the criminal procedural legislation, as well as its democratization by bringing it in line with the provisions of the Constitution of Ukraine and international legal acts. Our study examined the normative legal acts, both national and legally implemented, in the Republic of Azerbaijan and in Ukraine, which provide a legal basis for international cooperation in matters related to crime. The relevant provisions of international law are part of the treaties on combating transnational crime, as well as bilateral and multilateral agreements establishing a general framework for international cooperation in criminal matters.

The scope and elements of international cooperation in criminal matters are first outlined, followed by a discussion of international cooperation in

criminal matters and human rights using the Republic of Azerbaijan and Ukraine as examples. The principle of mutual recognition, new instruments of international cooperation such as extradition and execution of criminal sentences and measures are also examined, the transfer of convicts and the execution of custodial sentences, as well as the execution of monetary sanctions and asset recovery.

The results of the study, analysis, and comparison of regulatory and legal as well as international acts adopted and used by the Republic of Azerbaijan and in the Ukraine, manner prescribed by law will be useful, first, for law enforcement officers. Analysis and generalized conclusions in the article can also be used in the generalization of judicial practice, decisions of judicial and other state authorities, used in the preparation of scientific comments to the criminal and criminal procedure and other codes and laws that regulate the issues of legal assistance between states in criminal cases in the Republic of Azerbaijan and Ukraine.

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Image of the political leader in the context of the presidential election campaign

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Abstract

The article investigates the strategy of forming the image of the political leader in the context of the presidential election campaign. It points out the importance of the creation of professional images in the political activity of political leaders during their pre-electoral career. in addition, the concept of archetypes and their importance in the formation of the image of a political leader is outlined. The political images of the leaders of the presidential race of the United States of America are characterized. In the research aims to establish the meaning of the image for a political leader, the strategies of its formation and determine the prospects for future research. The methodology of the research is determined using methods of analysis, synthesis, behaviorist, systemic, structural-functional approach. It is concluded that, political imaging reveals a variety of technologies to improve speech, behavior, pronunciation of convenient words in the implementation of political activity. The lack of a thorough and complex analysis of this issue is evidenced by the fact that the number of scientific studies on the problem of political image in the context of the presidential campaign is scarce, at least in Ukraine.

Keywords: image creation; archetypes; image of the leader; presidential career; political marketing.

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Imagen del líder político en el contexto de la campaña electoral presidencial

Resumen

El artículo investiga la estrategia de formación de la imagen del líder político en el contexto de la campaña electoral presidencial. Se señala la importancia de la creación de imágenes profesionales en la actividad política de los líderes políticos durante su carrera preelectoral. además, se esboza el concepto de arquetipos y su importancia en la formación de la imagen de un líder político. Se caracterizan las imágenes políticas de los líderes de la carrera presidencial de los Estados Unidos de América. En la investigación pretende establecer el significado de la imagen para un líder político, las estrategias de su formación y determinar las perspectivas para futuras investigaciones. La metodología de la investigación está determinada por el uso de métodos de análisis, síntesis, enfoque conductista, sistémico, estructural-funcional. Se concluye que, la imagenología política revela una variedad de tecnologías para mejorar el habla, el comportamiento, la pronunciación de palabras convenientes en la implementación de la actividad política. La falta de un análisis exhaustivo y complejo de esta cuestión se evidencia por el hecho de que el número de estudios científicos sobre el problema de la imagen política en el contexto de la campaña presidencial es escaso, al menos en Ucrania.

Palabras clave: creación de imagen; arquetipos; imagen del líder; carrera presidencial; marketing político.

Introduction

Modern directions and trends in the development of applied politics, political science as a whole, are characterized by interdisciplinarity, comprehensive vectors of interpretation and evaluation of political and social categories, as well as the interconnection of numerous approaches and principles of political imageology, in particular, the image of a political leader in the context of the presidential election campaign.

The democratic transformations in the world make the problem of increasing the competitiveness of political leaders very relevant based on the formation and implementation in the public consciousness, demanded by the electorate image models of behavior of the political leader in the process of the presidential election campaign.

Under the conditions of different electoral systems of the state-legal institution of presidency, the way the political leader-candidate for presidency is perceived by the public consciousness is extremely

important, and this, in its turn, puts before the latter and his team the task of creating a system image, including a set of views on political, every day and professional activities, personal qualities, which would cause positive impressions among the electorate and ensure support during the presidential campaign A noticeable sign of modern presidential election campaigns is the transformation of political technologies in the conditions of local territories as a result of the application of modern mechanisms of public information communication, the spread of propaganda schools of political consulting, the financing of programs which are directed to the publication of practical manuals on the organization of elections.

The countries of continental America or the Anglo-Saxon legal system are a striking example of such activity. American democracy, mainly the U.S., represents innovative PR technologies, due to which the strategies of formation of the image of a political leader in the context of the presidential election campaign acquire unwavering directions of development of the Americanization of election campaigns of the world.

The coloring of the presidential election campaign with the signs of Americanism in the states of the European continent takes place by changing the political leader, reformatting the existing political system, or creating new political forces with a different ideology.

For example, in France and Italy new political movements were created, turning the political situation in the country in the direction of new elections, in the Federal Republic of Germany there is a process of change of political elites. Today it is impossible to do without studying the experience of election campaigns in the USA and advanced European countries in developing the concepts of forming the image of a political leader in the process of the presidential election campaign.

The process of formation of political technologies on the model of American democratic values shows its dynamics in the Republic of Ukraine as well, in particular a vivid example of the formation of the image of a political leader was the presidential election campaign of 2019 of the interests of the leading countries in the international arena. The successfully formed model of behavior of the political leader during the presidential election campaign determines the inevitable victory in the elections. This situation is explained by the sympathy of the electorate to the personality of the political leader, which is most vividly reflected in the example of the Ukrainian phenomenon of personal identification of political activity.

Thus, the image for a political leader plays the most essential role in capturing political power in the country, spreading political influence on all strata of public organization both through strong centralized politics and through the formation of regional practices of local self-government. More so because a positive image of a political leader will serve a long-term

character during the political struggle with his political opponents in the future.

The image constitutes an undeniable weight in political activity for modern politicians, portraying a mythological personification of the actions, speeches of a presidential candidate, considering the archetypal features of a certain model of behavior (Guliyev, 2020). The world experience shows that the strategies of formation of the image of a political leader are reduced to the influence of subconsciousness and consciousness of social strata of the population.

The positive result of the image of a political leader depends on the professional abilities and skills of the image-makers themselves, the means of mass communication and the level of development of the political and legal consciousness of society.

1. Methodology

In the process of implementation of our study general scientific and specifically doctrinal methods of political science are used. A number of scientific views are analyzed, which allow to highlight the system of formation of strategies of behavior of a political leader in the context of presidential pre-election activity and thus make a scientific approach to this issue. The relevance of the formation of the image of a political leader for the conduct of political activity during the pre-election race for the presidency of the state is highlighted.

Based on summarizing the informative material, the structural formation of the definition "political image" of the leader of the presidential campaign is implemented, the classification of gradual steps in achieving the goal of positive reaction and sympathy to the profiling subject of political activity is determined.

The behaviorist approach in the study of the political leader's image during the presidential election campaign is the indispensable indicator, which allows studying the behavior of individual subjects of a particular political election campaign of certain countries of the world, in particular the USA and Ukraine. The personal dimension of the political science aspect of image-making in pre-election battles establishes the psychological features of the political image of D. Trump, H. Clinton, V. Zelensky and other figures of the leading politicians.

The systematic method helped to form archetypal characteristics of the political image of the leaders of the presidential election campaigns. Structurally functional method helped to draw a parallel between the image-making models of different political subjects of the presidential campaign.

2. Reference overview

Problematics of political image as a complex socio-cultural category about the management of imagination, consciousness of the whole society or a certain part of it arose simultaneously with the social stratification of the population of the corresponding territory.

The article by I. Myloserdna is devoted to a comprehensive study of the image of a political leader as a category of PR technology. It is argued that, in practical political science, image is, first and foremost, a generalized perception that is shared by ordinary citizens about political subjects. Another thing is that it is purposefully shaped by image-makers (Myloserdna, 2019).

H. Trushevych notes that the components of the process of shaping the image of a politician through PR-technologies and to elucidate the mechanisms for applying a built political image through the media on the basis of the «included observation» method and direct participation in the work of the team of the People's Deputy of Ukraine on the formation of his image (Trushevych, 2019). A. Holishevska analyzes the factors influencing the formation of the level of trust as one of the main values of political reputation.

Based on the results of sociological research, the priorities of trust of the citizens of Ukraine have been identified. The necessity of ensuring the stabilization of the political sphere and the progressive development of society through the establishment of social consolidation, political responsibility, and the development of democratic forms of cooperation in the context of creating a positive political reputation is substantiated in the article by A. Holishevska (2020). One of the last monographic researches in Ukraine concerning the object of our research is the work on axiological bases and ways of optimization of image and reputation of a political party (Korniienko *et al.*, 2018).

The mentioned work is saturated with theoretical-methodological and conceptual bases of political image and reputation research, it highlights the political image as a part of the electoral culture of the society, establishes the argumentation of the ideological paradigm in the formation of a positive political image.

The authors note that communication potential, symbolism and personification are recognized as integral elements of the strategy of formation of political image. The selected study summarizes the effectiveness of building a modern model of target political style, the history of its emergence in the theory of political thought, the presence of socio-political situation for the choice of a particular model of political style.

The scientific treatment distinguishes mythological and propaganda dimensions of formation and functioning of political image. The author reproduces the political image in the context of propaganda power, which imposes on the public consciousness the views that form the political model of activity in the interests of the subjects of comprehension of this propaganda. At the same time, the researcher focuses on the provision of the propaganda component of the political image through the prism of mythologization, demythologization and remythologization (Vysotskyi, 2020).

Among the works on the formation of the political image the study on the consideration of the postulates of the political image of G. Wallace in the presidential campaign in the USA in 1948 stands out. In contrast to the samples of the positive image of the political leader in the context of the presidential election campaign the researcher established that the image-making of G. Wallace imitated activity, as the political leader of the USA in the presidential race was guided by views which were not reflected in the North American society of federal states at that time.

This strategy of building G. Wallace's political image led to his defeat in the U.S. presidential election campaign in 1948. (Lushchak, 2017). As already noted, in the innovative system of communication and information space there are training manuals published with the support of international non-governmental and governmental organizations as examples of political consulting.

These include the Ten Secrets of Political Campaigns (Bohush, 2016), clearly reflecting the structure of electoral process of a political subject in the form of ten blocks of political and technological activity. It is the "fourth secret" that characterizes the strategy of forming an effective political image, differentiates the structure of the political image, and reveals the determining role of the phenomenon of the "leader" of the election campaign candidate. This "secret" also notes the avoidance of having and creating attitudes that construct a negative image of the political leader of the election campaign.

Another practical political consulting manual sponsored by the United States Agency for International Development (USAID) and the Government of Canada with the assistance of the Canadian Department of Foreign Affairs and Trade (GAC) is "Winning Elections: Technologies, Campaigns, Principles," 2016 (Horodok *et al.,* 2016).

The manual consists of three sections, including the topics of technologies and implementation of the election campaign, successful examples, and principles of the candidate's campaign, as well as the legal basis for the organization and conduct of elections.

A separate place among the sources of the selected problems is occupied by the works, which investigate the strategies of formation of the image of the political leader of election campaigns in the leading democracies of the world community. In particular, the scientific publication dwells on the consideration of the presidential and parliamentary race in France in 2017.

It outlines the political portraits of the leading leaders of the political system of the Republic of France in 2017, as well as strategies for forming a positive image of E. Macron as the winner in the presidential election campaign7 of France, the differentiated view of the strategies and image-making of the French political leader (Mitrofanova, 2017) is disclosed.

The dynamics of the rating of the political leader of the presidential campaign in France 2017. E. Macron is formed in the following work on political image among the source complex (Mitrofanova, 2017). The great importance in the political-image context, in our opinion, is the result of the political leader's performance in the presidential election campaign. Such a context is also considered during the presidential elections in France in 2017 (Potikha, 2017).

Certainly, the advanced democracy of the political system represented on the North American continent deserves a detailed examination in the electoral campaign process, using the 2016 U.S. presidential election as an example. (Litvin, 2018). Thus, the psychological features observed in the construction of political image models of D. Trump and H. Clinton are established due to the manifestations of such archetypes as Self, Shadow, Anima, Animus, Persona and, especially, Trickster.

Ukrainian experience of formation of strategies of political leader's image in the context of presidential election campaign is described Hrynyk (2017) scientifically constructed practical aspects of construction and application of politicians' image through the cut of values of Ukrainian society. Political technological aspects of the presidential elections in Ukraine (Mytrofanova, 2017) constitute a great weight in the construction of directions of formation of the political image for the candidate for the presidency of Ukraine.

The co-author's study on presidential and parliamentary election campaigns in the conditions of one-year electoral cycles of the Ukrainian independence era reveals three annual electoral cycles for the period of Ukrainian independence, 1994, 2014, 2019. (Mytrofanova, 2017). The fundamental monographic work of recent years in the light of the construction of the political image of the candidate for the presidency of Ukraine is a book on the electoral process of 2019 in Ukraine in the light of public expectations (Maiboroda, 2019).

3. Results and Discussion

At the stage of development of modern global modern society by means of innovative-communicative interaction in the society the image in political processes plays a special importance. Today, image-making is the most important core of the formation of political consciousness and political culture of each individual, group of persons or society as a whole. Political image science reveals a variety of technologies for improving speech, behavior, pronunciation of expedient words in the implementation of political activity.

Thanks to political image constructs, political leaders have the opportunity to acquire a colored biography of past exploits, of a great friendly family, of the formation over a particular period of time of professional qualities with an emphasis on favorable characteristics that are in high demand in society. The image of a political leader is an artificially formed image which depends on both initial subjective characteristics, such as personal qualities and psychological features, and on objective socio-economic conditions in which the political activity of the presidential campaign leader and his entourage manifests itself.

The formation of the image of a political leader is impossible without a serious and clearly regulated work together with the mass media, which distribute political information among a numerous and ramified audience and influence the public consciousness of the recipients of political information.

Thanks to innovative advances in the information space, the media can reach the end consumer everywhere and constantly influence the members of any society. It should be noted that the concept of image is reflected in many scientific studies, as well as reference encyclopedic editions, but a unanimous definition has not yet been found, although some parallels are observed in the works of scientists. The content of the concept of "image" has changed quite significantly over the centuries.

The terms "image" and "image" were often simplistically confused, making the latter a kind of tracing of "image". At first, image was just understood as an image of an individual that exists in the minds of other individuals who are in direct contact with him. That is how the representatives of antique, medieval and enlightenment thought understood image; although they did not use the term "image", they did much to define the question of how an image of an individual is formed in the minds of other subjects, what factors favor or disfavor the formation of a positive image of this or that individual among his fellow citizens.

However, there is a rather noticeable difference between these social phenomena. Namely: the image is formed mainly in a natural way, while

the image is largely an artificial formation. It is possible to offer such an understanding of the image of the political leader of the presidential election campaign as a speculative image formed in the mass consciousness, has the character of a stereotype, emotional coloring, has a great regulatory-manipulative power and which is technologically created for specific strategic goals and tasks.

Despite the fact that the problem of forming a political image is well studied both by foreign and Ukrainian scientists, these studies cannot claim to be exhaustive, especially taking into account the fact that political practice is constantly replenished by new phenomena in this area. The absence of a comprehensive, complex analysis of the issue is evidenced by the fact that the number of Ukrainian scientific studies of the problem of political image in the context of the presidential campaign is few. Political scientists have turned to this problematic relatively recently.

The problems of the image of political parties and political figures, as the analysis shows, for many years have been studied mainly by representatives of social and political psychology, which have done a lot to clarify the question of the nature of these phenomena and the specifics of their formation.

Today there are practically no studies showing the relationship between the image of the party and the image of its leader. In the majority of sociological researches images of political parties and figures appear on the basis of the data received during determination of ratings of political parties and political figures that is hardly correct from the scientific point of view. In our opinion, a number of aspects of the problem of the image of political parties are not reflected in scientific research. The problem of formation in the mass consciousness of the transitive components of their image in the post-election period remained outside the circle of research attention (Korniienko *et al.*, 2018).

Now there is no clear, unambiguous answer to such questions as: what are the specifics of forming an image of a political party in mass consciousness?; how does this process differ from the process of creating an image of a political leader? to what extent do the images of a political party and its leader formed by party ideologists coincide with social expectations?; how well do the images of political parties presented in their program documents, works and speeches of leaders coincide with each other?; what factors facilitate and what impede the process of forming The image is not just an image or a communicative unit.

To be an instrument of propaganda power, to influence consciousness and behavior, it must function as a myth. In fact, the name of any famous politician is a myth, which acts as the basis of his image. For the mass consciousness, the myth is cleared of any history. The biography is brief, but it is not usually accentuated by propagandists.

For the construction of the myth of a politician, a political force, first, create contexts (occasions to show certain qualities or associate the politician with success in a certain area, with a positive perception), which act as initial for the myth of a politician, second, it is a mythological story about enemies, which are also myths (enemies must act as absolute evil, even the good deeds of enemies serve to hide evil intentions), or the myth of future prosperity with a politician or political force (Vysotskyi, 2020).

It may also be noted that in practical political science image is primarily a generalized image that consists in the average citizen about political actors. The image is a complex concept, so it can also be analyzed from different perspectives.

Researchers stop at three possible approaches to the image: functional, in which we can distinguish its different types, based on different types of functioning; contextual, in which we find these types in different contexts of implementation; and comparative (comparative), in which there is a comparison of close images (Myloserdna, 2019). The image is a generalized image - a representation of political subjects, which is purposefully constructed by the relevant specialists - image-makers.

At the current stage of development of society, with the weakness of ideological articulation and correspondingly decreasing role of ideologies that do not act as a basis for political self-determination of the Ukrainian voter, the influence of the personal factor on the electoral priorities continues to increase. The electoral choice of the population remains personalized, since there is a clear tendency to personalize the images of modern political parties and blocs, when the image of the leader determines the result achieved in the elections.

The personal factor plays an important role in people's perception of the political life of society. Its influence is especially noticeable during presidential elections in the phenomenon of the so called "deviation voting" when a candidate's personality is so attractive to the voters that they vote for him/her regardless of party affiliation.

The population perceives not the real figure of the politician, but his image - a certain model endowed with specially developed characteristics, fixed in the mass consciousness in the form of a stereotype (Madryha, 2016).

The political image is interpreted as a purposefully formed stereotypical image that exists in the public consciousness and is designed to psychologically influence a certain social community, public opinion at home and abroad. It is not just a mental image fixed in the mind as a reflection of reality, it is a specially modeled purposeful reflection of an image created by professionals, based on a certain reality (Shurko, 2018).

Based on the above and other research approaches in the definition of the above concept, it can be argued that the political image is a comprehensively formed image of a political subject, which is endowed with characteristic personal mythological qualities to penetrate the consciousness of society through mass communication in order to cause the greatest sympathy. field. A necessary condition for creating a positive political reputation, correlated to the political image is the trust of citizens in the bodies of political power.

Trust creates a connection between public institutions and citizens, forming a sense of commonality of interests and goals of activity (Holishevska, 2020). The electoral process largely depends on the activity of the elite and the ability of civil society to influence its formation and functioning.

It is well known that the control of the political elite over the electoral process can be exercised in the following ways: attempts to regulate the composition of subjects of the electoral process to reduce the weight of those social groups or ideas that are considered undesirable; use of various options of electoral engineering, isolation of the policy-making process from the influence of public opinion through regulation of links between election-related decisions, the composition and organization of the government structures, etc.

The great importance is the qualitative selection of the elite, its level of responsibility, competence, professionalism, etc. During the years of building democracy, the promotion of the state and society was not significant enough in the formation of a national, politically weighty, and responsible elite. The practice of domestic political life shows that the constant appeal to the people as their sovereign is quite often blatant political speculation for the sake of achieving some political interests or a manifestation of the failure of a politician.

But the greatest challenge in this situation is the disregard for the right of the political elite itself, which begins to influence political processes based on its professional beliefs, sometimes not coinciding with the opinion of a large part of society (Ilnytskyi, 2018). Elections are a strategic game, but very different for everyone involved. Some decide and strategically control the process, while others only contemplate and do not see everything. But everyone participates. For politicians, it is a game of Go to seize territories and positions. For the candidates, it is a roulette game with an unexpected result. For the authorities it is a real chess game.

It is important who started it and who placed their pieces in a winning configuration. There are pawns, they have the same fate and opportunities, and there is a queen - a queen in Africa, with no rules and unlimited opportunities. For the electorate, the elections are clearly not a strategic game, but a national lottery, everyone plays, and some number wins a little.

And the grand prize will be won by one out of millions, and that on television. Well, for political technologists, it's a game of Renju. The field is constantly expanding, chaos ensues. And only one person knows where five stones in a row will suddenly appear... (Bohush, 2016). Developing an image is a question that invariably confronts everyone who is involved to some degree in political activity.

What is meant by the word image is nothing other than the perception that the general public or a certain group has of a certain person or organization. The peculiarity of image is that it can lead both to a successful political career and to the loss of authority and the opportunity to influence certain factors. An image is made up of an emotional aspect; the impression a person or organization makes; associative connections. The necessary components of image maintenance are: experience; knowledge; ideology; and technical skills of political communication (the very last of these components is devoted to the proposed publication) (Horodok *et al.,* 2016).

In addition, the structure of a politician's image consists of: reputation; appearance; nonverbal behavior; verbal behavior; creative elements; political program, platform; compliance with people's expectations (Bohush, 2016). In fact, image is only one side of the coin. Its other side is the personal representation of a politician or party about themselves (i.e., self-presentation or self-esteem).

What the self-image will be partly depends on the message that the politician or party offers to the public. It is, in particular, the ideological strain that becomes basic to the existence of a party or the political activity of an individual. Only if this message meets the demands of society and addresses key issues can we hope for support and therefore a positive image. In this process, the following three points should be paid attention to:

1. The politician must determine for himself whether the self-presentation corresponds to the real state of affairs. This is necessary when self-image is high and performance is not up to scrutiny (e.g., campaign results that are significantly lower than expected). The reasons for this situation should be made clear. If the reason is a party message, it requires immediate correction, since even the best advertising cannot change the taste of a tainted product.

2. If the formulated personal impression of the message seems positive, it is necessary to test it in the target groups, that is, to find out how those for whom it is assigned (primarily voters) react to it. It is also important to see what effect your image has in different social and age groups. Such research can be done by working with the media and various organizations, conducting sociological studies, etc.

   If people get an inadequate, negative impression of a party or an individual politician or are insufficiently informed, you should not blame the media better turn to the analysis of your own self-image.

3. Finally, an important issue is the confrontation between self-presentation and the image you have; efforts aimed at eliminating the differences between these two concepts. First of all, find out what you should focus on to eliminate them (Horodok *et al*., 2016).

Preparatory steps must be taken to determine a strategy for shaping and approving the candidate's image: 1. Sociological and socio-psychological analysis of the situation in the district. Analysis of expectations, advantages, perceptions of the ideal candidate. 2. Analysis of perception of the candidate's persona in the minds of voters. 3. Comparison of ideal candidate's image with candidate's personal resources. 4. Determining the direction of approving a candidate's image. The strategic image of a candidate is a model constructed on the basis of identifying the expectations of the population about what a future deputy should be (and should not be). The strategic image consists of a positive image of the candidate, constructed from answers to the question what he should be, and a negative image, constructed from answers what he should not be. A positive strategic image is formed on the basis of basic sociological research and includes the following components:

1. Moral qualities (honesty, decency, fairness, etc.).
2. Business qualities (professionalism, intelligence, education, etc.).
3. Public leader qualities (concern for people, humanity, intelligence, etc.).
4. Other positive qualities (attractive appearance, age, marital status, gender, nationality, etc.) (Bohush, 2016).

Architects of the political image in the process of its formation, of course, systematically rely on an extensive system of scientific achievements, particularly psychology. Because it is the psychological features of the individual personality that allow us to comprehensively reveal the sought-after personal image of the political leader, which brings its results in the form of sympathy of the electorate - a positive assessment of the behavior of the political subject in the human consciousness.

Based on of numerous psychological observations, we have an opportunity to highlight the psychological and political science aspects of the formation of the image of a political leader during the 2016 presidential election campaign in the United States, moreover, to establish the essence of the specific archetype of the subject of the presidential race.

Based on the principles of the existence of imageology and the professional activities of image-makers and political technologists themselves, it can be stated that any image of a political leader can be formed in terms of understanding one archetype as well as in a set of archetypes. In our understanding, "archetype" in Greek should be interpreted as the beginning of a trace or reflection, i.e., a prototype of a political leader in the

form of symbolic structural elements of culture, associating the behavior of a subject of political presidential election activity with his conscious and subconscious perception by the electorate. At present, a positive image of a politician necessarily contains, along with a demonstration of the ability to solve problems (in the present or in the future), a demonstration of care for the population (especially for the most vulnerable strata), that is, it combines the archetypes of Creator, Warrior and Father (Sherman, 2013).

Indeed, the comprehensive coverage of the archetypes of the image behavior of the political leader in the presidential electoral process constitutes a positive result, although still the presence of the dominant political prototype remains unchanged. At the same time, the positive result embodies the formation of the image of the political leader of the presidential election campaign not only in the positive perception of such an image in the minds of electoral groups of the society of a particular state, but also the construction of negative qualitative characteristics, which also lead to the expected desired result - approval in society.

A vivid example of the latter is the strategy of forming the image of D. Trump during the 2016 presidential campaign in the United States. Taking as an example only certain fragments of D. Trump's behavior (Litvin, 2018), namely his irritating calls to China in Taiwan; the invitation to the president of the Philippines, who allowed without trial to shoot drug dealers in the street, we can say about his rather ambiguous behavior, which on the one hand surprised the public, on the other hand caused a certain part of it to be delighted, because no presidential candidate could afford it before, that is, he is not like everyone else.

Donald Trump's rhetoric, like his behavior, has surprised and continues to surprise not only American society but also the world community. His statements tended to reinforce the archetypal image. To take some of them as an example: "Anyone who thinks my time has passed is tragically mistaken"; "The only difference between me and the other candidates is that I am more honest, and my women are prettier"; "Some people think my fingers are short. But my fingers are as long and beautiful as other parts of my body. And it's thoroughly documented"; "My motto: hire the best and don't trust them with anything"; "If Hillary Clinton couldn't satisfy her husband, how can she satisfy America?" So, D. Trump from the beginning positioned himself as an ambiguous politician who did not consider the norms of behavior and broke stereotypes. It was thanks to his rather harsh statements, unpredictable behavior, headlong reactions that he quickly managed to attract public attention to himself.

The media actively picked up and spread all the information about him, because this contributed to their popularity. In this case, the dividends were reciprocal and calculated: Donald Trump constantly attracted the attention of the public, the PQM continued to focus on his actions, attracting it to

himself again. This strategy of shaping the image of a political leader during a presidential election campaign is not a novelty, because throughout their political career such politicians as V. Zhirinovsky in the Russian Federation, as well as O. Liashko in the Republic of Ukraine took this type of political leader, who personifies the psychological model of the "Archaic Trickster", as a behavior model.

One of the disadvantages of such an archetypal pattern is that it is not always possible to perceive it rationally in the public consciousness, because there is a question of "good" or "bad" of such forms of political activity in the context of the presidential election campaign. The misunderstanding of such expression is also seen by combining "surprise," "disgust," and simultaneously "capture," which was fundamental in the North American consciousness in the context of the 2016 presidential election race. A parallel reflection of the Trickster archetype was evident throughout the entire performance of Studio 95 Kvartal with V. Zelensky in the Republic of Ukraine.

Although such activity was long before the presidential elections of 2019 in Ukraine, but co-opted the corresponding system of the model behavior of the "prototype", which formed the basis of the strategy of the image formation of the political leader, in particular through the statement in the direction of mockery or inappropriate mentioning in supposedly comedy performances the problems of genocide against the Ukrainian people Holodomor, mocking the unsatisfactory work of public authorities, which necessarily suppressed the authority of branches of state power in the Republic.

The specified consequences of the negative characteristics, which in no way can be compared with the values of the Ukrainian society and its consciousness, led to the positive result of building the image of V. Zelensky in the context of the presidential election campaign of 2019 in Ukraine. The trending archetype that became the basis for the formation of H. Clinton's image was the Persona archetype. At the same time the archetype of the mother is observed.

Later model transformations begin to be implemented and the archetype of the modern businesswoman of the Statesman emerges. M. Spillane (Korniienko *et al.*, 2018) describes the transformation of H. Clinton's Habitat image as follows: "The transformation of N. Major from a pretty but simply dressed woman into a rather elegant lady was widely covered and commented on. America's first lady, H. Clinton, had to largely change her appearance during the 1992 presidential election campaign because the woman's severe appearance cost her husband many votes.

Glasses were replaced by contact lenses, her hair was dyed gold, and her closet of shapeless suits was replaced by attractive clothes. H. Clinton's

image has been constructed in a traditional pattern (Litvin, 2018) with the public's expectations in mind. But, in most cases, her behavior, public appearances, statements were a reaction to the rhetorical attacks, actions of D. Trump, which prevented her from positioning herself organically. The Persona archetype exists as a contrast to the Shadow archetype and represents an idealized image for all moral values and social expectations. Persona is what our self-shows society, can have many masks, and reflect them in different situations and different social classes, categories of society, different from each other (Shkvorchenko *et al.*, 2021).

However, Persona aspires to the formation of a positive character, the personality of a political leader during the presidential election campaign. Given the 2016 presidential election process in the United States, there are some incomprehensible contradictions in the strategies of building the political image of the leader of the presidential race.

If the negative features of D. Trump's political image manifested themselves in the sympathy of the electoral field, the negative characteristics of H. Clinton's personality showed a different result. Recall that during live broadcasts H. Clinton sometimes had brief epileptic seizures, which prevented her from carrying out verbal communication.

At that time open aggressive statements of D. Trump, which, in turn, also prevented the implementation of verbal communication, not only in terms of the level of development of culture of the politician, which emphasizes exactly the study of the concept of archetypes, but also in a direct sense, such as the same delay in speech, had the opposite effect.

Another identical example of the above-mentioned political leaders in the context of the 2016 presidential election campaign in the United States is the use of the negative fact of B. Clinton's intimate relations with M. Lewinsky, which was one of the procedural grounds for the resignation of the US President, and the presentation of the same negative fact. regarding D. Trump, who committed inappropriate actions of sexual nature towards persons of the opposite sex.

As we can see, the essentially identical archetypal psychological patterns of behavior of political leaders find radically opposite reflection in the sympathy of the electoral consciousness of the society. This can be explained by other personified features of the image of a political leader, in particular, given the fact that D. Trump won the presidential election campaign, we can identify positive corollary factors in the formation of the image of a political leader: physical health; gender identity; social status; ethnicity; property status; international relations.

Psychological science claims that the presence and perception of an archetype exists in every person regardless of any attributes, including race, language, nationality, social status, property status, article, health status

and other attributes that identify this or that individual person - a person. Let us consider in more detail the factors we have highlighted for shaping the image of a political leader in the context of the 2016 presidential election campaign in the United States.

Therefore, the state of physical health could influence the political choice of an American citizen, as the above-mentioned negative characteristics of the verbal communication of the two political leaders D. Trump and H. Clinton showed that the more stable in terms of physical health D. Trump has more advantages. Secondly, in our opinion, gender also played a role, because the presence of extraneous sexual relations in marital life (adultery of one of the spouses) or the presence of a generally negative experience of intimate relations in women and men also lead to the opposite results.

There is also a social factor here - whether the political leader has a registered marriage or not. Thirdly, the "white British" became a symbol of the Anglo-American political elite, which has formed a certain demand in societies for strategies to form the image of a political leader. In the fourth, not the last place in the creation of D. Trump's political image was his main previous professional, economic activity which brought the former US president a worldwide success and billion-dollar fortune. In the end, a huge amount of factual data on the connection of D. Trump with the state authorities of the Russian Federation, in the information and communication space, showed an effective vector of positive sympathy in the public consciousness of the American people.

Moreover, the highlighting of the mentioned factors of the formation of the image of the political leader in the person of D. Trump during the presidential race in the USA proved that their rethinking and established strategies for the development of the behavioral model of the new political image in the person of J. Biden, one time at TV debates stated that Biden is a "puppet of Putin" (LB, 2020).

Thus, the opposing psychological features of the pattern of behavior in the formation of the image of the political leader in the context of the presidential election campaign constitute ambiguous vectors in the professional activity of image-making because they lead to the opposite result, although the bases of formation of the final electoral sympathy are the same in essence.

The following should reveal the political slogans and directions of program promises of image-making of D. Trump and H. Clinton. As a major employer (Arabadzhy, 2016), Trump emphasizes the need to return economic opportunities to the U.S., to do this it is necessary to create new industries, to attract new workers. D. Trump accused President B. Obama of cutting the coal industry and promised to repeal what he said were "outrageous rules and regulations." Trump proposes eliminating taxes on corporations, significant corporate tax cuts, and government budget cuts.

On health care, Trump proposes a ban on abortions at a certain stage of pregnancy, except in cases of pregnancy resulting from rape, incest, or when the woman's life is in danger. This idea is not new, particularly for Catholic countries, and some innovations are in Clinton's program: the legalization of marijuana for medical purposes and same-sex marriage. Hillary Clinton proposes (Arabadzhy, 2016) raising the minimum wage to $12 an hour, tax breaks for working families, and increasing women's participation in the workforce. To improve the lives of the middle class, Clinton intends to ensure wage equality for women and men, implement comprehensive immigration reform (including legalization for some illegal immigrants), impose stricter gun control, and increase spending on infrastructure.

So, the political leaders chose in the formation of their image-making all directions of state regulation of social relations, the intertwining of conservative and liberal directions of political activity in the strategies of the formation of the image of D. Trump and H. Clinton is clearly traced. However, it should be noted that conservative sentiments prevailed to a greater extent in the model of behavior of D. Trump, while H. Clinton chose a neoliberal pattern of political image.

Based on the results of our study, it can be argued that the views of scholars coincide on the importance of shaping the image of a political leader in the context of the presidential election campaign. We unequivocally agree that a certain archetype plays a key factor in the construction of a political leader's image.

At the same time, we would like to draw attention to the fact that, in contrast to the established concept of psychological availability of the perception of an archetype by a specific person, regardless of gender, race, language, ethnicity, social and property status and other characteristics, can still influence the formation of specific specified identities in the public consciousness demanded image of a political leader the destruction of stereotypes is one of the successful practices of image-making of a political leader in the presidential election campaign Myth is another element of the image formation strategy during the presidential election campaigns.

A significant role for image-making is played by sociological research on the assessment of the development of society and its consciousness, which dictates the conditions of demand for political activity. A disadvantage in professional image-making of a political leader, in our opinion, is the short-term model of behavior of the subject of political activity, which manifests itself in the abuse of the use of the demand by society or a certain social group with a low level of political and legal culture and consciousness.

The study of the strategies of forming the image of a political leader in the context of the presidential election campaign serves as a new approach in the study of the problems of imageology political imageology, can be

applied in the educational process in teaching special courses of image making of subjects of political activity.

The results of our research can become projects of future political technology projects in the process of forming the political image of the future president of the state. The prospects for further research can be empirical studies on the understanding by groups of people of the political and legal definitions that determine the level of formation of society, the electoral field, and the ideal image of the political leader of the presidential election campaign.

Conclusions

The human subconscious reflects the social essence of the electoral field in society. The main purpose of the formation of the political leader's image strategies in the context of the presidential election campaign is to influence this human subconscious or consciousness of the public as a whole and cause positive emotions, which would characterize the sympathy to the candidate for president of the state.

The political image today is seen as a professionally formed image based on the psychological archetypes of the individual activity of the personality of the political leader. Image-makers make their best efforts for a varied combination of patterns of behavior of political figures in the election race, depending on the public demand of the electorate, social tension, and the immediate preferences of the human consciousness. Because the image of a political leader in the context of a presidential election campaign is formed on the basis of a social request, very often voters become deceived after winning the election, because they do not receive the expected results that were present in the formation of the image of a political leader.

Thus, the myth of politics is created by image-makers as a substitution of real being for the meanings that voters want to see, hear, or receive. Archetypes as psychological features, which are laid down in the basis of every person's existence, help in the formation of the political leader's image strategy in the context of the presidential election campaign to create one of the classic theatrical roles demanded in society: "Savior of the Motherland", "Father of the Nation", "Magic Leader". When developing strategies for modeling the image of a political leader in the context of a presidential election campaign, it is important to consider the role of mass communications in the process of "promotion" of the subject of political activity.

If a political leader is engaged in a comprehensive political activity, attends various events, directs his work to support public organizations or

leads economic, regional projects, but it is not covered in the media, such activity will be mostly indirect and will not have much influence. on the formation of a political image among the social strata of society. With the help of the media: TV channels, the Internet, periodicals, etc., it is possible to exert a great influence on the human consciousness.

On the other hand, political communication is well known for the process of preparing invalid political coloring material, which in many cases is not appreciated at the proper level by the consumer of the political-media product. This phenomenon is caused by the fact that social groups of the electorate with a high degree of self-awareness, consciousness, especially political and legal culture and consciousness, highly educated groups of individuals with an expanded view of social and political events, phenomena and figures can become aloof from the entire political process.

The specified presence is one of the problems of the Ukrainian society as citizens of Ukraine who consider imperfect construction of an image of the political leader during presidential pre-election campaign or, as it was already specified above, mythologization of the political figure, become passive in consumption of a political and communication product, and this, in turn, leads to negative consequences for society.

The latter is shown in that political electoral activity is displayed by those layers of the population which pay less attention to ra Such social groups of society are extremely active, when a political leader during his/her presidential pre-election campaign opposes to the incumbent president rational and reasonably justified reproaches in his public and political activity during his/her presidency.

Consequently, the image of a political leader in the context of a presidential political campaign is necessarily an important element of the political activity of this subject, the positive result of which depends on several factors, on the level of political and legal consciousness, culture, public education, as well as the level of professionalism of image-makers and the moral qualities of the political technologists themselves.

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Criminal Policy of Iran and USA about Private Sector's Involvement in Prisons

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Abstract

This article uses a descriptive-analytical research method to investigate prison privatization models and their shortcomings, to explore the positions of the United States and Iran on the matter and thus find answers to the following questions: Is the participation of the private sector in prison advisable? Is management possible under the laws of Iran and the United States? Is this participation consistent with the fundamental objectives of criminal law? In which of these two countries, can the participation of the private sector in prison management be optimally enforced? Despite the absence of legal regulations in Iran on the participation of the private sector in prison administration, the private sector entered the prison administration system since 1994. It is concluded that the studies carried out show that the participation of the private sector in prison management occurs qualitatively and quantitatively at a higher level in the United States than in Iran, due to the promulgation of legal provisions that create the conditions for this purpose in that country, among other political factors, cultural and legal.

Keywords: privatization of prisons; prison; execution of punishments; prison management; private prison.

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Política criminal de Irán y Estados Unidos sobre la participación del sector privado en las cárceles

Resumen

El presente artículo utiliza un método de investigación descriptivo-analítico para investigar los modelos de privatización carcelaria y sus deficiencias, con el fin de explorar las posturas de Estados Unidos e Irán al respecto y así encontrar respuestas a las siguientes preguntas: ¿La participación del sector privado en la prisión es recomendable? ¿La gestión es posible según lo dispuesto en las leyes de Irán y Estados Unidos? ¿Es esta participación coherente con los objetivos fundamentales del derecho penal? ¿En cuál de estos dos países, la participación del sector privado en la gestión penitenciaria se puede hacer cumplir de manera óptima? A pesar de la ausencia de regulaciones legales en Irán sobre la participación del sector privado en la administración penitenciaria, el sector privado ingresó al sistema de administración penitenciaria desde 1994. Se concluye que los estudios realizados demuestran que la participación del sector privado en la gestión penitenciaria se da cualitativa y cuantitativamente en un nivel más alto en los Estados Unidos que en Irán, debido a la promulgación de disposiciones legales que crean las condiciones para tal fin es ese país, entre otros factores políticos, culturales y jurídicos.

Palabras clave: privatización de las prisiones; prisión; ejecución de castigos; gestión penitenciaria; prisión privada.

Introduction

Criminal justice is the process within which the government reacts to the criminal behaviors for supporting the society, enhancing the quality and level of justice and punishing the criminals. This process has numerous stages such as crime discovery, indictment and pursuit, investigation, trial and verdict issuance, punishment determination, appeal and sentence enforcement.

Privatization means delegation of affairs to the private sector. The private sector's involvement in its apparent form is a process in the course of which the public sector's duties and installations are transferred at every level to the private sector but privatization, in its real sense, refers to the cultural promulgation in all society levels by which the executive, judicature and legislature branches and all individuals of the country believe that the people should be assigned to their own tasks (Rahimi Borujerdi, 2006).

Criminal justice trend can be investigated and researched in two temporal cross-sections of serving justice amongst the tribes and serving justice

amongst the territories in macro-level in primitive communities in which such concepts as the public expediencies, government and the other public institutions were absent and such other concepts as crime, punishment and justice enforcement were envisioned as completely private. In these epochs of history, all of the stages of penal sentence enforcement were carried out by the private sector for the fact that there were no governments. At present, tribes (nongovernmental sector) administrate criminal justice in some of the countries like Myanmar and even punishments like death penalty are executed by the private sector (Sane'ei, 1983).

It was with the formation of the governments that the government proctored the provision of security and, in fact, the provision of security, was transformed to manifestation of the governments' enforcement of their rule of law and, due to the same reason, criminal justice became associated with public order and national governance.

However, in the recent decades, the new attitude to the national governance is interested in people's participation in the administration of the society more than before because elevation of the people's participation enables winning of their trust and brings credibility and legitimacy for a government and eases the serving of justice and the today's attitudes towards such concepts as the people and the people-driven organizations, on the one hand, and the government's inability in dealing with various kinds of delinquencies, especially from the executive perspectives, on the other hand, have accentuated the role of the coherent people-driven institutions more than ever before (Añez Castillo, 2017).

This is why the inclinations have been increased to the semi-formal or private institutions parallel to overcoming of the shortfalls existent in the formal systems of many of the countries as well as towards the corroboration and organization of procedures outside the formal institutions for suppressing crimes and/or enforcing the penal sentences.

1. Materials and Methods

Our method in conducting this research is descriptive-analytical. The method of collecting the required information was taking notes from library resources as well as Internet resources.

2. Discussion

2.1. Private Sector's Involvement in Prison Management: In Iran's Law

Real privatization comes about when the legislature, judicature and executive branch and all of the society members come to the belief that the people should be assigned to their own tasks (Rahimi Borujerdi, 2006). With regard to the background of privatization in Iran before the victory of Islamic Revolution, numerous ideas have been expressed. Some believe that:

> Privatization process has been commenced in Iran before the revolution during the years from 1951 to 1971 and the number of the private companies has been increasing during these years and that many of the activities that were being performed by the government during the past decades, have been delegated to the private sector (Kalanfarnia'ei, 2017: 26).

Some others are of the belief that "enforcement of the privatization programs has been initiated in Iran before the Islamic Revolution since 1961. The delegation of shares to the workers and sharing of the factories' interests with them have been amongst the steps taken during that period of time as a social correction. In this stage, the government's economic activities that had been expanded in the light of the first Pahlavi government's programs, underwent severe reduction and the private sector's share of economy was intensively increased (Nobakht, 1999).

The investigation of our country's penal regulations before the Islamic Revolution, including the law on the general punishment passed in 1955, the law on the principles of forming justice department passed in 1950, the law on the principles of penal courts passed in 1951, the law on conditional releasing of the prisoners passed in 1958, the law on the security and instructive interventions passed in 1960, the law on the suspension of the punishment enforcement passed in 1967, the law on the general punishment passed in 1973 and others, indicate that the issue of the private sector's management of the prisons and enforcement of the imprisonment sentences has not been predicted in the rules and regulations before the Islamic Revolution.

In the years after the victory of the Islamic Revolution, the country's conditions went on so that[3] the government was incumbently obliged to shoulder the ownership and management of a major part of the country's industry and economy. Corresponding to the Act 44 of the constitution, as

3 It means conditions stemming from the occurrence of Iraq's imposed war on Iran that was commenced since 1980.

well, the government was once again compelled to play the essential and pivotal role in this area. In the years after the imposed war and in line with development programs, privatization was again taken into account since 1989 in the budget program's verdicts and regulations.

The approval of the law on the first economic, social and cultural plan of Islamic Republic of Iran at 02/11/1989 and the law on the method of delegating the governmental shares belonging to the war devotees and laborers at 08/12/1994 signify the government's will for enforcing the privatization programs.

After the enactment of the third and the fourth development plans, privatization program was more seriously pursued[4]. In the next stage, it was with the enactment and announcement of the general policies of the Act 44 of the constitution that privatization was recognized as one of the most important economic programs of the government. The law on the enforcement of the general policies of Act 44 of the constitution that was approved at 02/08/2008 can be realized as a comprehensive and perpetual law about the privatization that classified and authorized all the previous scattered regulations.

In the area of the penal law, the executive by-law of the organization of prisons and the security and instructive interventions, passed in 2005, constituted the first text that explicitly pointed to the possibility of the private sector's involvement in some of the jail guarding services. Articles 13 and 15 of the aforementioned procedures pointed to the private sector's involvement in the employment and/or apprenticeship of the individuals sentenced to imprisonment.

Although the private sector's involvement in prison management during the years after the Islamic Revolution has not been explicitly pointed out, it has been implemented in practice. As the proctor of the administration of the prison affairs, the judicature has issued the order for privatization about two prisons and it has also signed contracts in this regard. At first, it was in 1974 that the order was issued for involvement in the management of the private sector in Vakil Abad Prison in Mashhad. After that and within nearly three years, administration of the following sections was delegated to the private sector but the general management of the prisons was still tenured by the government.

Prison's hospital, prisons' penal sentence enforcement office, statistics and computer information registration and recording, cultural services, instruction and counseling of the prisoners and unarmed guarding in the interior affairs of the prison were amongst the sections the administration

4 In the fourth development plant, emphasis has been made on the idea that the government is allowed in line with empowering the nongovernmental sector and facilitation of the privatization process to make use of all the possible methods.

of which was delegated to the private sector (Shams, 2002). In the early years of the privatization of Vakil Abad Prison, much opposition were posited. But, the statistics signify the optimum performance of the private sector in this area in such a way that despite the considerable reduction in the administrative personnel and reduction in the costs, the speed and accuracy in performing the prison affairs were increased and the statistics of the prisoners' violations were reduced at the same time.

The second experience of our country's penal law was management of the prison in Adel Abad, Shiraz, by the private sector. The contract that had been signed for management of Adel Abad Prison was in such a way that the major current and managerial duties of the prison's management had to be delegated to the private sector within a year and it had been stipulated in the meantime that certain mechanisms were to be taken into consideration for the government's supervision and assessment of the private sector's performance (Vanaki *et al.*, 2021).

In this contract, the computer affairs, enforcement of the penal sentences, all of the issues related to the inmates' rights and protection of the prisoners inside the wards had been given to the private sector. In case of the private sector's success in Adel Abad Prison, the delegation of jailing system of the whole country to the private sector was deemed likely but the privatization plan of Adel Abad Prison was a failure and caused creation of ambiguities and doubts regarding the successful presence of the private sector in the jailing system.

In spite of the fact that there is no limitation for the private sector's management of the prisons as specified in the current rules and regulations, it is necessary considering the benefits of enforcing privatization regulations in incarceration enforcement (including the reduction in the government's costs, improvement of efficiency and control and reduction of the crime perpetration statistics) for our country's legislator to perceive this necessity like many of the advanced countries and take serious measures in this regard via enacting a comprehensive and specialized law so as to set the ground for the better involvement of the private sector in the enforcement of the penal sentences.

As an example, out country's legislator stipulates in article 176 of the law on the criminal trial procedures, passed in 2013, that "the judicature can delegate the delivery of the judicial writs to the private sectors". But, such explicitness is not seen regarding the private sector's involvement in prison management. Furthermore, the imprisonment alternatives (subject of article 64 and its subsequent articles in the Islamic Penal Code of Law) are somehow indicative of hiring of the private sector in the jailing system.

2.2. In the Law of the US

The subject of the private sector's involvement in the management of prisons in the USA has been more outstanding than any other topic. Thus, the issue is investigated in two separate paragraphs. The first paragraph deals with pre-Punitiveness period and the second paragraph is pertinent to post-Punitiveness period.

2.3. Pre-Punitiveness Period

The term "Punitiveness" means tendencies towards the punishment and penalty. Literally, it means the criminal policy's inclination towards the revitalization of punishing and enforcement of punishment. Some of the jurists believe that: "Punitiveness has become prevalent in some of the countries including USA since 1960s and 1970s" (Mahmoudi Janaki & Moradi Hasan, 2011).

The severe and serious increase in the crimes and atrocities in the 1960s and 1970s drew the attention of the US government towards crime and its control (Wollan, 1986). Due to the same reason, it has to be stated that the US government has concentrated on the Punitiveness policy and exercising strictness towards crime perpetration since 1980 (Ronald Reagan's presidency period in the USA).

The present paragraph aims at investigating the evolutions in the private sector's involvement in prison management in the US in the period before Punitiveness, i.e. until before 1980. Earning income via enforcing punishment in the US is not a newly emergent phenomenon in such a way that the vast presence of the private sector in the enforcement of imprisonment punishment can be witnessed in the 18th and 19th centuries.

The major reasons of privatization in that period pertain to the insufficient capacity of the public prisons and, more importantly, the commercial interests of the private sector for using the workforce of the inmates. As an example, amongst the southern states, Texas delegated the administration of all its prisons to the private sector based on the convicts' employment system since mid-1800s till early 1900s. At the same time, prisoners were given on rent to the private camps for extraction of coal and phosphorus in Florida. In 1884, the coal and iron company of Tennessee State recruited all the prisoners of this state as miners (Thomas, 2006).

These contracts that had been predominantly signed within the format of the convicts' employment were cancelled in 1923 and the endorsement of contract with private sector for the use of their workforce lost its commercial potential due to the violation of the prisoners' rights and, eventually, it was completely eradicated in 1940. But, the presence of the private sector in the area of offering services parallel to the correction and treatment of the adolescents continued its activities (Yijia, 2010).

The most major activities by the private sector in the US's prisons in the pre-Punitiveness era pertained to the adolescent wards of the prisons. In 1976, a contract was signed in Pennsylvania for private sector's administrating of a safe treatment unit for violent crimes by the juvenile delinquents. (Thomas, 2006).

2.4. Post-Punitiveness Period

One of the major challenges with which the US' criminal justice system faced during the recent decades, particularly after 1980, is the subject of the excessive increase in the number of prisoners (criminals' inflation) in the state prisons. The doubled increase in the number of the adult criminals who had been sentenced to imprisonment by the state courts was per se a testimony to this issue. Safeguarding the security and accommodation of the large number of the prisoners caused an increase in the costs and responsibilities of federal, state and local authorities.

Since 1980s, USA witnessed the frustration of the public thoughts due to the failure of the criminal justice system in the implementation of the criminals' rehabilitation. In the meanwhile, the government's reluctance for supplying more budgets to the corrective institutions and the increase in the need for prison space intensified the crisis. It was under such conditions that the prisons' privatization and endorsement of overall or partial contracts with private sector for administrating the prison affairs were posited as solutions for overcoming the crisis and it was welcomed in practice (Austin & Coventry, 2001).

The major part of the contracts between the government and the private sector for administrating the affairs of the US' prisons since 1980 on was endorsed subject to the effect of two powerful factors: the first one is president Reagan's announcement in the first speech after election that the government has encountered a problem and that the solution is concentration on the private sector; the second one is that the USA had placed very strict confrontation with the criminals atop of its agenda with its emphasis on Punitiveness policy and this had caused this country to have the highest rate of the prisons worldwide (Selman & Leighton, 2010).

The contracts signed between the government and the private sector gradually became popular and the major part of the services inside the prison was delegated to the private sector within several years after the onset of privatization (Yijia, 2010).

During the years from 1980 to 1990, the prisons in the USA underwent a large increase. At the same time with these changes, this general belief was formed that if the private sector's contractors can perform their duties appropriately, the government's cost in the jailing system would be intensively reduced and, in the meanwhile, the service-offering quality

would not suffer. It was after this that many of the states publicized their tendencies for getting the private sector involved in the enforcement of the imprisonment punishments (Dolovich, 2005).

One of the most important reasons for agreement to the private sector's involvement in the enforcement of incarceration sentences pertains to the reduction of the government costs. However, the preliminary privatization business in 1980 did not affirm such a claim. In 1990, Charles H. Logan, a jurist and the author of the book "the penal law in the US", asserted that the prisons administrated by the private sector are not necessarily less costly than the state-managed prisons. But, the results of the polls in 1990s signified that the government's costs have been reduced on average by about 20% after the enforcement of the incarceration punishment (Thomas, 2006).

In 1987, the number of the state and federal prisoners reached 581.609 persons and this number was increased by about 76% in contrast to 1980; however, the capacity of the prisons had not undergone any increase in comparison to 1980. This caused the state and federal prisons to admit prisoners between 105% and 120% and between 37% and 73% above their maximum capacities in 1987 and 120000 state inmates were kept in local custodies due to the shortage of detention places. The reason for this issue was the lack of prison construction on the right time and the newness of the private sector's intervention in the enforcement of prison punishment (Logan, 1990).

The presence and the intervention of the private sector in the US' prisons were increased on a daily basis in such a way that 158 private prisons were working in this country until 1998 according to the statistics. Out of the foresaid number, 30 prisons were in Puerto Rico and the District of Columbia, 43 prisons were in Texas, 24 prisons were in California, 10 prisons were in Florida and 9 prisons were in Colorado. The majority of the private prisons were concentrated in the southern and western states (Austin & Coventry, 2001). Based on the declared statistics, Texas and California were amongst the pioneering states in the area of jailing system's privatization.

In 2013, at least 11 countries of the world had accepted and were exercising the private sector's involvement in the enforcement of the imprisonment punishment. In this year, USA was keeping the largest number of inmates in its private jails (Jacovetti, 2016). In 2016, 128.063 individuals were being kept in the private prisons of the USA. This number was equivalent to 5.8% of the total number of state and federal prisoners in this country. In addition, the comparison of the statistics from 2000 to 2016 signifies a growth by 47% in the number of the prisoners in the private prisons of the USA (Fact sheet, 2018).

3. Prison Privatization Models and the Stances of Iran and the USA' Laws

3.1. American-English Model

Privatization process refers to a contract within which the responsibilities and capital assets are generally or partially transferred from the public sector to the private sector (Jacovetti, 2016). American-English privatization model or the full privatization model points to the situation in which the government delegates all its authorities to the private sector. This occurs when the public sector has no advantage over the private sector; on the other hand, there is no way other than perfect delegation for improving the efficiency.

In the full privatization model, the criminal justice management is transferred in all of the stages from the initial investigations to the enforcement of the sentences thoroughly to the private sector and the government only reserves the right of supervising the private sector for itself (Yijia, 2010).

Prison privatization based on American-English Model means complete delegation of all the sentence enforcement authorities to the private sector. For example, in the discussion on the prison privatization, all of the government's authorities even those related to the management and security of the prisons are delegated to the private sector. Of course, this does not mean the deprivation of the government of its right for supervising the private sector rather the government still reserves the right to supervise the performance of the private sector.

USA, England, Australia and New Zealand are amongst the countries taking advantage of the full prison privatization method (Matheus & Francis, 2002). According to the fact that the government's right of supervising the private sector still persists in this model, some jurists believe that this privatization model cannot be considered as full privatization (Lippke, 1997). But, it has to be stated in response to this belief that the privatization model from which the government's supervision is completely removed does not essentially exist. full privatization or the American-English Model includes three methods in all of which management and security affairs are delegated to the private sector. These three methods are the followings: extensive prison privatization, prisoner export and special prisons.

In the extensive privatization method, as it is understood from the name, the private sector is granted the most and the highest authorities for managing the prisons. The prisoner export method or bed renting method is applied in states that are not permitted to enforce extensive privatization regulations and they can only send their prisoners to states wherein the

extensive privatization is being implemented based on this method. This type of privatization was declared forbidden after a while due to the double pain (deprivation of visitation right and being away from the living place) it imposes to the prisoners (McDonald & Patten, 2004).

In Spec private prison, the private sector seminally constructs prisons and they are owned by the private sector. Then, the management, security and generally all prison-related affairs' delegation contract is signed between the private sector and the government (Hording, 2001).

3.2. The French Model

Unlike the American-English Model, the French privatization model does not mean perfect delegation of all the authorities to the private sector rather, in this model, prison management is still owned by the government but the logistics and non-managerial affairs, including the intra-prison services, can be delegated to the private sector.

The plan for creation of private prisons has been taken into account since 1986 in France. The law passed on 23rd of June, 1987, allows the government to assign the private sector to designing, map drawing and construction of the prisons. But, issues like convicts' punishment right and penalty enforcement are still exclusively in possession of the government.

The public thoughts also confirm the inherent nature of the government's right for determining and enforcing punishment and consider it consistent with the principles governing a political society. In fact, the government guarantees the establishment of justice to the name and on behalf of all the people from a country. Based on this mindset, there is a very strong and unbreakable relationship between the government and the punishment enforcement. Thus, the reactions to the criminal behavior that have been specified outside the predetermined framework by the government cannot be accepted as the punishment enforcement (Mehra & Yekrangi, 2012).

In the French privatization model, the managerial duties of the government cannot be delegated to the private sector. After the enactment and operationalization of the law that had been passed on 23rd of June, 1987, it was stipulated that 21 new prisons should be constructed in various geographical regions in France and that administration of some parts inside the prison should be given to the private sector.

The aforesaid law had issued the permission for delegation of only 40% of the jobs and positions in the prisons to the private sector. The jobs and positions that could be delegated were secretary, kitchen, cleaning and education duties. Considering the fact that the duty of safeguarding the security of prison and taking care of the inmates was still to be shouldered by the government, the prisons that were administrated in this style could be termed "semi-private prisons" (Bullock, 2012).

Corresponding to the paragraph 12 of the rule 54 in the minimum standard regulations of the European Council regarding the method of treating the prisoners, the prison's staff members should be regularly and permanently installed under the title of professional employees and they should be under the employment of the government.

The term "regularly" implies that the nongovernmental employees can be members of the prison staff only exceptionally. This exception can include delegation of the management of all the prisons to the private sector. But, hiring the private sector for the service area's affairs is devoid of fault. Thus, the French privatization model is in accordance to the human right regulations (Matheus & Francis, 2002).

3.3. Intermediate Model

The intermediate prison privatization model is a combination of the two previously mentioned models, i.e. American-English Privatization Model and French Model. It was explained in the first and second paragraphs that the private sector is assigned to prison management or security and consequently all the intra-prison services in American-English or full privatization models.

French privatization model recounted as partial prison privatization indicates a state wherein the affairs related to management are performed by the government but the intra-prison services can be delegated to the private sector. The intermediate model is a mixture of the two foresaid models in such a way that the management affairs are conducted by the private sector and the government shoulders safeguarding of the prison's security. In other words, in the intermediate or combined model, the entire prison affairs (except the preservation of security that is shouldered by the government and the governmental institutions) can be transferred to the private sector.

3.4. Prison Privatization Model in the Law of Iran and the USA

This chapter explores the privatization model accepted in the law of Iran and the USA. As an undeniable truth, it has to be stated that establishment of prison and detention centers for keeping the culprits and convicts happened earlier than the specification of law in the US and it dates back to about a century ago.

But, regarding the private sector's intervention in the enforcement of the imprisonment sentences and jailing system, although Iran's judicature and legislature have not overlooked the issue, it has to be asserted that the privatization history in the US is reflective of the idea that this country has valuable and practical experiences about the private sector's participation in jailing system but Iran's legal system is in the beginning of the privatization

path. Thus, the study of the experiences by the US's legal system can be a good guide for our country's jurists in selecting the most appropriate model for allowing the private sector's involvement in the enforcement of the penal sentences, particularly prison punishment.

3.5. In the Law of the US

In the US, the private sector began its activities from the juvenile wards. According to the census in 1974 in the USA, 41% of the adolescent population of this country, i.e. 37749 youths, was kept in 1300 private institutions as criminals. In the interval between 1975 and 1989, the private sector's intervention in keeping the juvenile delinquents underwent an increase by 70% (McDonald, 1992). The new round of the private sector's intervention in the jailing system of the adults was started from 1980.

Some American jurists believed that the USA has not implemented a full prison privatization model and that the government is involved in the control of jailing system. But, the fact of the matter is that like what has happened in the US' area of economy, the US' legal system has accepted the full privatization (American-English) pattern from the very beginning and delegated the management and security of its prisons to the private sector and it has only reserved the supervision right for itself (Lippke, 1997).

The first wave of privatization in the USA was started since 1825 in the form of the traditional privatization of the prisons (convicts' renting). In this system, the private sector exploited the prisoners but the government disagreed to the personal use of the convicts' workforce. Following the extensive protests by the general public and the political groups, the convicts' renting system was annulled in 1923.

The second wave of the prisons' privatization in the US began since 1980. In this period, the majority of the contractors in executing the prison privatization plan were non-for-profit companies. But, at the same time, various levels of the government, as well, attended this commercial market. In federal level, privatization was commenced with the opening of Huston's rehabilitation center by Corrections Corporation of America (CCA) (Yijia, 2010). Modern private prisons largely differ from their traditional samples.

In 1984, a contract was signed between the private sector and the government based on which the private sector was assigned to the intra-prison services (French or semi-private model) but the full administration of the prison's affairs was delegated later on to the private sector in the majority of the contrasts signed between it and the government (full privatization or American-English Model).

In 1990s, the private sector's intervention in the US's prison underwent a considerable increase. In the interval between 1995 and 2000, about

three fourth of the USA's prisons had become privatized. During these years, the private sector shouldered various duties, including supply of the financial resources and construction and exploitation of the prison (Spec Privatization model which is a subcategory of the full privatization pattern).

The privatization experience in the USA indicates that the private sector has been confronted with some problems in a few cases. In 2009, the prisoners instigated a riot in the private prison of Reeves District in Texas's center and destroyed parts of the prison; one person was killed and the prisoners announced their dissatisfaction about the healthcare status (Selman & Leighton, 2010).

Riot in a prison that was managed by private sector based on a full privatization contract convinced the USA's state officials that they should exert a higher and more exact supervision on the performance of the private sector.

3.6. In Iran's Law

Private sector's involvement in the enforcement of imprisonment punishment in Iran can be found in a case-specific manner and for a few cases, as for the history and evolutions of prisons during the recent century in Iran, it has to be stated that: "The formation charter of the prisons and detention centers and the duties of their agents and employees" was enacted in 1928 by the board of ministers and Qasr Prison was established in 1929 as the first Iranian prison. This prison was the only prison existent in Tehran till 1960s (before the construction of Evin). Before the victory of Islamic Revolution in Iran, the prisons' administration was in the hands of the general police office.

After the victory of Islamic Revolution in 1979, the administration of the prisons was given to the ministry of justice. In 1985, the organization of prisons was substituted for the prisons' proctorship council. Finally, since 1993, the organization of prisons was transferred to the head of the judicature.

The study in the historical trend of delegating the prisons' administration between the aforementioned institutions is important in that it shows that the prisons' administration can be even delegated to the private sector in Iran. Two decades after the victory of Islamic Revolution, the increase in the number of prisons and reduction in the service levels, shortage of free space in the prisons and the number of the agents and the facilities' shortfalls made Iran's judicial officials become inclined towards the prison privatization.

The first privatization experience occurred in 1994 in Iran. In this year, parts of Mashhad's Vakil Abad prison were delegated to the private

sector for three years. The administration of the prison's hospital, judicial sentences' enforcement office, kitchen, recording of the statistics and computer information, cultural services, prisoners' instruction, psychological counseling services and healthcare and unarmed guarding services within the interior shells of the prison were amongst the affairs the tenures of which were delegated to the private sector in Vakil Abad Prison (Shams, 2002).

Considering the aforesaid explanations, Vakil Abad Prison was delegated based on semi-private (French) model. In the contract, the private sector was assigned to logistic services and the government reserved the management and safeguarding the security of the prison for itself. The privatization program of this prison was implemented successfully. Offering of the services in this prison was improved and the prisoners' welfare level was elevated. In addition, the number of the office workers was considerably reduced in the sentence enforcement section but simultaneously the speed and accuracy of the finished tasks were improved.

The second privatization experience occurred in 2005 in our country. In this year, a major part of Adel Abad Prison in Shiraz was delegated to private sector. This prison's privatization was conducted based on full privatization (American-English) model.

Unlike the first privatization experience, the privatization contract of Adel Abad Prison encountered failure due to the study weaknesses and non-performance of comprehensive research. Of course, it has to be noted that the successful privatization experience based on French Model (Vakil Abad Prison in Mashhad) and/or unsuccessful experience of the privatization program based on American-English Model or even intermediate model (Adel Abad Prison in Shiraz) does not mean the inefficiency of the two aforementioned privatization model rather the experiences by the other countries bring testimony to the idea that even American-English or intermediate models can be successful and have positive outcomes. In other words, the success or failure of each of these three privatization model in any country depends on the expediencies of its domestic law.

Thus, it is necessary to perform precise studies regarding the structure of the domestic law and their expediencies before entering contract with the private sector so that trial and error and contingent unsuccessful experiences can be prevented in future.

4. Shortcomings of the Prison Privatization in the Penal Sentences Enforcement

4.1. The Fundamental Goal Differences between the Private and State Prisons

Amongst the objections put forth by the opponents of private sector's involvement in jailing system, the fundamental goal differences between the private and state prisons can be pointed out. The opponents of the privatization believe that the private sector is essentially seeking for profit and interest and the punishment enforcement is only a means of achieving such a goal as earning money.

The opponents of privatization state that the acquisition of profit is the most important priority of the private sector and this causes the negligence of the government's programs that are set with social and political goals (Ta'ati, 1992). Some others believe that privatization of incarceration enforcement is an ineffective strategy contradicting the public expediencies and interests and opposite to the strategic principles of the penal law and against the essential rights of every member of the society (Najafi Abrand Abadi & Zare'e Mehrjerdi, 1992).

In other words, the private sector's goal is summarized in economic interests but the government's goal of enforcing punishment is a lot more different than that of the private sector for it incorporates issues like punishing, correcting and treating, restoration of the social order and so forth.

The opponents of the private sector's involvement in the incarceration enforcement believe that many of the private companies in the USA use the prisoners' workforce for acquiring economic profit. These companies claim that the use of the prisoners' workforce serves instructing occupations to them but the abundant financial interests that can be obtained from the use of prisoners' workforce in the private sector proves the opposite of this claim (Ntsobi, 2005). On the other hand, the evidence signifies that prisoners are forced to labor and receive no wage in some states, including Texas.

In the other states, as well, the wages are very trivial and less than the minimum work wage in the US. About 25% of the federal convicts are sent to factories that pay them a wage ranging between 23 cents and 1.5 dollars per hour. This wage is a lot lower than the minimum wage in the US (Rasuli, 2005).

Criticism to the fundamental goal differences between the private and state prisons has also caused concerns in Iran's penal code of law. It is evident that judicature is meant by government in the criminal justice section and crime trial process. According to the contents of Islamic

Republic of Iran's constitution, the judicature performs its actions through the justice department's courts that should be formed in adherence to the Islamic regulations and they are responsible for resolving the lawsuits and preserving the public's rights and expanding and enforcing justice and protecting the divine limits[5].

They are also responsible for actualizing the following goals: trial and issuance of sentences about the lawsuits, abuses and complaints, revitalization of the public rights and expansion of justice and legitimate freedoms, supervision on the proper enforcement of regulations, crime discovery and pursuit and punishment and Ta'azir retribution of the criminals and protection of the limits and enforcement of the codified Islamic regulations and taking proper measures for preventing the crime perpetration by the criminals and correction of them[6].

> The nature of the judicial action regarding the correspondence of the general regulations and the overall law with the special case of a lawsuit requires the judge to issue a sentence in adherence to the law, judicial procedures, sentences by the law scholars and legal and interpretation principles willingly or unwillingly. So, the justice system's intervention features the value of an independent and special action and cannot be enumerated amongst the outcomes of the executive branch's measures or simple executive interventions. Additionally, it has to be stated that the result of the judgement is sometimes the headline of the executive actions (Qazi Shari'at Panahi, 2005: 39).

Based thereon, the opponents of punishment enforcement privatization, especially prison privatization, believe that the private sector's intervention in the incarceration enforcement is not justifiable. The opponents are of the belief that the private sector is more thinking about acquiring financial interests and profits from punishment enforcement than seeking for the actualization of the fundamental objectives stipulated in the constitution and the other domestic penal regulations.

4.2. The Inherent Duty of the Government in Incarceration Enforcement

Another objection posited by the opponents of the private sector's involvement in jailing system is the inherent nature of the government's duty of incarceration enforcement meaning that the government's role in enforcing punishment is an essential not accessory issue, i.e. no other person has the right to specify and enforce punishment.

In the USA, some of the organizations and institutions are of the belief that private sector is not permitted to enforce incarceration. They believe

5 Consult Act 61 of Islamic Republic of Iran's Constitution.

6 Consult Act 156 of Islamic Republic of Iran's Constitution.

that the enforcement of incarceration is the government's exclusive right for it is considered as an example of governance and cannot be delegated to others (private sector) (Van R, 1990). The opponents of incarceration enforcement privatization in the US believe that the delegation of the government's exclusive right of punishment enforcement to the private sector would cause reductions in the government's authority.

Moreover, the administration of the prisons' affairs and safeguarding of the prisoners' welfare and health are amongst the governments' duties that cannot be transferred to the private sector. The opponents of the privatization believe that the prerequisite for requiring the government to remain accountable about the issues related to the incarceration punishment is the protection of the government's responsibility and control over the administration of the prison affairs. When the government delegates its governance right (enforcement of incarceration) to the private sector, the question can be raised as to how the government can be made committed to the control over the prison's order and security.

The order preservation should be also naturally excluded from the government's area of duties in case that its governance power is decreased in administrating the prisons' affairs. Furthermore, the opponents of the privatization believe that the delegation of the government's exclusive right in enforcing incarceration to the private sector provides the managers, agents and staff members of the private sector with vast judicial authorities and enforce their own ideas regarding the length of incarceration and the method and quality of the prisoners' enjoyment of the legal privileges and advantages (Wecnt, 1987).

4.3. Ambiguity in Efficiency Elevation

Another objection proposed by the opponents of the private sector's intervention in the enforcement of the incarceration is the ambiguity in efficiency elevation after the private sector's involvement in prison management. The opponents of the privatization believe that the enforcement of the privatization regulations in the process of penal sentences' enforcement, particularly incarceration, not only would lead to no increase in efficiency but it would also result in reduction in the quality of the services offered by the private sector due to its efforts in line with cost reduction.

The legislators of the countries, jurists and general public take into consideration the utilitarian and non-utilitarian issues altogether in regard of the private sector's involvement in the punishment enforcement and expect the private sector's involvement in these areas to lead to the elevation of efficiency through cost reduction and, in the meanwhile, quality enhancement. Undoubtedly, the increase in the efficiency and quality of

service offering after the private sector's intervention is one of the most important wants of the public wants. The governments have endorsed contracts with the private sector by making promises for actualizing this want (Carceral, 2006). But, the mere entering of a contract with the private sector for intervening in the process of incarceration enforcement cannot guarantee the efficiency elevation in the privatized section.

One of the goals of privatization is creation of competition. Naturally, this competition leads to the reduction in the costs. Assuming the nonexistence of competition and motivation for acquiring profit, the governmental services would be always constrained by bureaucratic actions and the general public's interests will not be supplied.

Unlike what has been proposed by the opponents of privatization, the proponents of privatization believe that the creation of governmental monopoly in offering public services would eventually cause the reduction in the efficiency and quality of service-providing due to the absence of effective motivation. On the contrary, the market's dynamicity brings about an increase in the efficiency and quality (Selman & Leighton, 2010).

The opponents of the privatization believe that even if it is accepted that the private sector's involvement in penal sentences enforcement causes reduction in the government's costs, these cost reductions would not be necessarily accompanied by efficiency increase. One of the concerns proposed in this regard is the reduction in the quantity and quality of the foodstuff provided to the detainees of the private prisons and offering of lower than standard services and instructions to them (Logan, 1990).

The opponents of the private sector's involvement in penal sentences enforcement process are of the belief that the governments are mostly concentrated on the cost reduction in their discussions on privatization and efficiency elevation has been always neglected. The opponents of privatization believe that the private sector reduces the number of social workers in the prisons for acquiring higher profit and this causes the occurrence of the following crises: increase in the number of escapes, riot, nervous weakness and cardiac attacks in the detainees (Ntsobi, 2005).

In response to this criticism and objection and considering all the reasoning by the opponents of privatization regarding the ambiguity in efficiency elevation after the private sector's involvement in incarceration enforcement, it can be asserted that the private sector's effort for reducing the costs would not always lead to the reduction in efficiency and increase in the quality of offered services.

Increase or reduction in efficiency following privatization has nothing to do with the privatization itself rather it is a function of the nature of the contract concluded between the government and the private sector as well as the government's management and supervision of the affairs.

If the governments solely seek cost reduction and go to extremes in this regard, no elevation of efficiency and decline in the quality of the services offered by the private sector would be likely. Thus, the governments should adopt the moderation and middle-way in signing contracts with the private sector in such a way that the efficiency and quality elevation of the offered services should not be sacrificed for the cost reductions.

In other words, although the reduction in the governmental costs is an important issue, it should not be accompanied by consequences and costs to the size of the efficiency and quality reduction. One of the strategies suggested in this regard is that the investigation of the private sector's contractors should be based on simultaneous consideration of both these items, i.e. cost and interests. It is evident that the contracts signed with the private sector solely based on the costs would not be deemed favorable.

On the other hand, the undeniable reality is that the state sector usually does not show much of a motility and motivation in creating changes for increasing the quality of services offered in the prisons. Conversely, the private sector is more motivated to bring about changes for increasing the quality and efficiency. Unlike the government, the private sector has higher output and efficiency because it does not need administrative formalities and formal agreements for putting its decisions into practice.

There are various solutions considered for guaranteeing the elevation of efficiency and qualitative development of the services offered by the private sector in the private prisons. The followings are but some of these solutions:

1. preservation of competition and possibility of substituting the service offering.
2. determination of clear-cut standards for ensuring the quality of service offering.
3. investigation of the activities by the private sector and the personnel busy cooperating with them through independent supervisors (Benedict *et al*., 2009). "American Correctional Association (ACA)" has enacted guidelines that enable the supervision and evaluation of the quality indices for the private sector's performance in administrating the prisons.

One of the other important indices proposed in the USA for the investigation and evaluation of the private sector's performance in prison administration is inquiring suggestions and criticisms from the individuals detained in the private prisons (Yijia, 2010).

In Iran's penal law, as well, in order for guaranteeing the efficiency and bringing about quality elevation in the services offered by the private sector, the government should firstly concentrate on the endorsement of comprehensive contracts with the private sector and explicitly specify the

private sector's requirements in line with elevating efficiency and quality so as to block the road to any excuse and justification for the private sector and, secondly, it has to predict the required supervisory instruments for having full appraisal of the private sector's performance and prevent the contingent violations of the contract signed between it and the private sector.

4.4. Negligence of the Employees' Rights

Another objection posited by the opponents of the private sector's involvement in the prison management pertains to the negligence of the employees' rights by the private sector. The opponents of the privatization believe that the observance of the privatization regulations in the process of penal sentences' enforcement, especially incarceration, would cause reductions in the salaries and benefits of the private sector's employees even assuming the success in the performance of the assigned duties.

This may also be followed by other disadvantages, as well, because the lack of motivation in the private sector's workforce causes an increase in the rates of intentions to leave and the private sector would be incumbently forced to substitute its employees with new workforce that would accordingly need more time to get adapted to the workplace conditions and job descriptions of the assigned duties due to being naïve and this may bring about declines in the performance of the private sector in the long run.

In the USA, the results of the investigation of the private prisons are suggestive of the reality that the quality of the administration of such prisons has undergone a tangible decline. One of the most important reasons proposed for such a decrease is that the employees recruited by the private sector receive lower salaries and benefits as compared to the government-employed staff. The reception of lower salaries and benefits has caused the reduction in the motivation of the workforce working in the private sector and their refrainment from offering proper services.

The private sector has also become coerced to replace its unsatisfied workforce with the new staff members who are predominantly inexperienced and this intensifies the reduction in the quality of the offered services (Ntsobi, 2005). The low rate of the salaries and benefits of the private sector's employees in the USA is natural.

In 2000, the average income of employees from private sector was 17 thousand dollars a year whereas their counterparts received about 23 thousand dollars per year, on average, under similar conditions in the state sector.

By paying low salaries and benefits to the employees, the private sector was faced with another crisis called the increase in the rate of displacement

that caused reduction in the workforce's experience in the performance of the assigned duties.

The statistics are suggestive of the considerable difference in the displacement rates of the employees in the private sector in contrast to the state sector. The employees' displacement rates in the private and state sectors are 52% and 16%, respectively. It was declared in the course of the researches performed in 2005 that the private prisons' employees have less than one year of work experience on average. These statistics were indicative of work experiences below three months in the personnel responsible for the security of the prisons.

It is evident that the constant dislocation of the employees recruited by the private sector causes an increase in the coefficient of the employees' mistakes. This issue would be followed by the convicts' dissatisfaction of the punishment enforcement. For instance, this might result in riot and disobedience of the prisoners in the private prisons (Coyle & Campbell, 2003).

Conclusions

The investigation of the evolutions in the private sector's involvement in prison management in the laws of US and Iran shows that the private sector's intervention in prison management is not so much old in the rules and regulations of Iran as well as in the statutory provisions before the Islamic Revolution. But, the possibility of the private sector's participation in some of the jailing services has been pointed out in the rules and regulations after the Islamic Revolution, in the rules of procedures of the prisons' organization and the regulations on the security and instructive measures passed in 2005.

Of course, years before the enactment of this procedure, the private sector has been practically allowed to take part in the administration of Vakil Abad Prison in Mashhad. Therefore, the intervention by the private sector in the enforcement of the incarceration punishment has not been prohibited in Iran's penal code of law or, better said, it has been actually undertaken. In the US law following Punitiveness, i.e. since 1980 on, the criminal inflation stemming from the extreme increase in the number of the inmates caused the permitting of the private sector to enter the state prisons of the USA.

In this period, the private sector obtained permission for constructing new prisons, as well, and the majority of the states passed regulations related to privatization. It was with the development in this trend that the private sector's involvement in the legal system of the USA is no longer restricted to the incarceration enforcement and post-jail cares are also covered.

By holding rehabilitation and socialization courses for the prisoners after being released from the prison as well as via providing them with the grounds of employment and acquiring income, the private sector plays an effective role in preventing recidivism and the reentry into the prison environment.

The investigations show that the private sector's involvement in the incarceration enforcement is not contradictory to the fundamental goals of penal law but it does not mean the unconditional and absolute delegation of the jailing affairs to the private sector rather the delegation should be carried out case-specifically and after exact and specialized studies.

In the USA's penal law, there is not much of a problem for delegating the prisons' affairs to the private sector because the Federal government and each of the states have approved special regulations for doing so and set the proper grounds for the appropriate enforcement of the privatization regulations. But, in Iran, due to the existence of the explicit legal orders indicating the prison delegation to the private sector, some ambiguities have come about in this regard.

Of course, the implementation of two cases of privatization in Vakil Abad Prison of Mashhad and Adel Abad Prison of Shiraz caused the ambiguities to be reduced a little and showed that the reasoning by the proponents of the privatization regarding the possibility of private sector's involvement in the enforcement of the penal sentences has been correct.

It should be stated in confirming this idea that unlike the affairs related to trial and discrepancy resolution are enumerated amongst the purely judicial matters (inherent judicial affairs or specifically judicial affairs) and cannot be delegated to the private sector; prison delegation to the private sector as an issue related to the organizations affiliated with the judicature and with the government and the judicature's participation and tenure of them not being necessary and essential seems to be devoid of any problem.

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Administrative and legal security of public information services in the activities of bodies of legislative and judicial power

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Abstract

The subject of the investigation is devoted to the problems of administrative and legal security of public information services. The main content characterized the essence of the security of public information services as a constituent element of the national security mechanism; in addition, a retrospective analysis of this notion was carried out and the current state of the normative regulation of its use was established. It is argued that the regulatory framework to guarantee the security of public information services is a distributed set of legislative and normative acts, whose current state requires the active promotion of processes of systematization of legislation to achieve the desired level of efficiency in the implementation of the right to information. Methodologically, a review of materials and methods based on the analysis of documents of the activities of the authorities in the field of security of public information services was carried out. By way of conclusion, se found that an official regulatory act «On Public Information Services» is required, in which the principles of operation of public administration bodies and their conceptual and systemic interaction must be enshrined.

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Keywords: access to information; information security; national security; legal principles, administrative transparency.

Seguridad administrativa y jurídica de los servicios de información pública en las actividades de los órganos del poder legislativo y judicial

Resumen

El objeto de la investigación está dedicado a los problemas de seguridad administrativa y jurídica de los servicios públicos de información. En el contenido principal se caracterizó la esencia de la seguridad de los servicios públicos de información como elemento constitutivo del mecanismo de seguridad nacional; además, se realizó un análisis retrospectivo de tal noción y se estableció el estado actual de la regulación normativa de su uso. Se argumenta que el marco regulatorio para garantizar la seguridad de los servicios públicos de información es un conjunto distribuido de actos legislativos y normativos, cuyo estado actual requiere la promoción activa de procesos de sistematización de la legislación para lograr el nivel deseado de eficiencia en la implementación del derecho a la información. En lo metodológico se efectuo una revisión de materiales y métodos basados en el análisis de documentos de las actividades de las autoridades en el campo de la seguridad de los servicios públicos de información. A modo de conclusión, se encontró que se requiere de un acto reglamentario oficial "Sobre los Servicios de Información Pública", en el que se deben consagrar los principios de funcionamiento de los órganos de la administración pública y su interacción conceptual y sistémica.

Palabras clave: acceso a la información; seguridad de la información; seguridad nacional; principios juridicos, transparencia administrativa.

Introduction

The modern state is the state, where information about the activity of which is as transparent and open as possible, and as a result it is accessible to the public. Ensuring transparency and accessibility of information resources of the state is part of the system of guarantees for the implementation and protection of subjective rights of private individuals. One of the components of the mechanism of national security is the security of public information services.

The appropriate level of administrative and legal support for public information services allows us to guarantee the practical implementation of the rights of every person in general. In particular, the right to receive public services, access to public information, special permissions, notifications and other kinds of administrative acts are guaranteed.In light of the above, special attention should be paid to the problem of establishing the specifics of administrative and legal assurance of the requirements of national security of public information services and ways to improve its efficiency.

1. Literature review

Establishment of directions to improve the efficiency of information support for the functioning of public administration bodies was carried out in the dissertation study of G. O. Blinovoya on the subject «Administrative and legal principles of information support of public administration bodies in Ukraine: current theory and practice» (2019), which provides that the classification of types of information needs and interests of public administration bodies according to such criteria as: legal status of a public administration body (informational needs and interests of a ministry, department, service, agency, division, territorial division, employee or service person of a public administration body or a person who performs public functions); Territory to which the public administration body's authority extends (local, national and international information needs and interests of public administration bodies); Areas of activity of public administration bodies (organizational, human resources, functional, non-financial, supervisory, controlling); Information activity orientation (internal and external); Time of existence of information need and interest (constant, periodic, time-periodic, one-time) (Blinova, 2019).

A.G. Chornous on «Administrative and legal regulation of the National Information Infrastructure of Ukraine» (2020) the concept and features of national information infrastructures was described; the structural components of national information infrastructure and investigated their features and legal regulation were identified; the history of the origin and interconnection of national and global information infrastructures was examined; national information infrastructure as an organizational and legal basis for the activities of the state authorities and local self-government was described; the principles, purpose and objectives of the functioning of national information infrastructure were explained; the concepts and elements of the mechanism of administrative and legal regulation of national information infrastructure were explored ; the legal status of the subjects of state regulation of legal relations in the field of formation and development of national information infrastructure was analyzed; the prospects of development of the national information infrastructure of Ukraine based on the experience of foreign countries were identified; the peculiarities of functioning of structural components of the national information infrastructure of Ukraine as the legal and organizational platform for the (Chornous, 2020).

However, within the limits of current legal research on security of public information services is carried out sporadically, piecemeal, for the sake of comprehensiveness and consistency, which determines the relevance of this scientific work.

2. Results and discussion

The adoption in 2003 of the Declaration of Principles «Building an Information Society:A Global Task in the New Millennium» in Geneva at the World Summit on Information Society meant a formal recognition of the postulates of the priority of interaction between the society and the state on the basis of transparency, openness, public accessibility of the exchange of official information and databases of the results of activities of the state authorities and local self-government, the formation of an information society, which is conditioned by the global world processes of informatization.

To solve the strategic task of building an information society, for which the priority will be to ensure the concept of transparency of public administration, is extremely important strategic task, the idea of cooperation and interaction between society and the state on the basis of partnership and transparency (Law of Switzerland, 2003). Realization and implementation of the idea of developing an information society is defined in the Geneva Action Plan which was adopted on December 12, 2003 (Law of Switzerland, 2003).

A viable approach to implementing the concept of information society is to create functioning public information services as a guarantee of compliance with the principles of transparency and openness of the functions of public administration. It is the task of maximizing social, economic and environmental benefits of the information society that must be solved by the state authorities, which are required to create a legal, regulatory and political environment that has the proper level of confidence in the society, the speed and efficiency of performing the functions of exchange and access to information contained in official databases related to the provision of administrative services and implementation of licensing, regulations and oversight of administrative and procedural procedures (Law of Switzerland, 2003).

Therefore, the priority direction of development of the modern state should be the creation of such conditions, under which information must be public at the same time.

The nationwide system of information support for the activities of public administration bodies must meet not only the requirements of prosperity,

but also security, which is an inherent part of the system of national security of any state in the world, including Ukraine. However, ensuring transparency and information openness of the bodies of state power and local self-government, and at the same time the problem of national information security arises.

Therefore, since 2003, a system of national strategic documents on the formation of a secure public and state environment has been gradually formed in general, and particularly in the field of compliance with security requirements in the functioning of public information services. Thus, one of the first strategic documents, the implementation of the provisions of which was focused on ensuring the efficiency of the information society was the Order of the Cabinet of Ministers of Ukraine of 16. 01.2008 № 14, which prioritized the implementation of the idea of public administration on the basis of ensuring the development and protection of the national system of public information services (Law of Ukraine, 2008).

The legislative basis for creating conditions for effective security of public information services is a system of laws and regulations, which include the Law of Ukraine of 13.01.2011 № 2939-VI «About access to public information» (Law of Ukraine, 2011), Law of Ukraine of June 1, 2010 № 2297-VI «About protection of personal data»(Law of Ukraine, 2010), etc. In addition to these legislative acts, strategic program documents are constantly being developed and implemented, one of them being the Law of Ukraine № 537-V of January 9, 2007 «On the Main principles of the development of the information society in Ukraine for 2007-2015» (Law of Ukraine, 2007),where the problems of systemic nature, which have the priority of solution for the implementation of the concept of «good governance» in Ukraine, were noted. In addition, this legislative act established a system of principles for functioning of public information services as part of the information support system of the public administration power.

Among them, there are particularly important the principles of freedom of creation, receipt, use and dissemination of information; the principles of objectivity, authenticity, completeness and accuracy of information; the principles of harmonization of the interests of people, society and the state in information activity; principles of operativeness of disclosure of information of public importance; principles of admissibility of limitation of access to information only if the restriction is established by provisions of current legislation; the principles of minimizing the negative impact of information and the negative consequences of the functioning of information technology; the principles of preventing the illegal dissemination, use and violation of the integrity of information; the principles of harmonization of information legislation and the entire system of national legislation (Law of Ukraine, 2007). In the light of the propriety of active involvement in the processes of systematization of information legislation in Ukraine it is

necessary to emphasize that the idea of developing and adopting the draft of the Ukrainian Information Code, which has been repeatedly announced.

The idea of drafting the Ukrainian Information Code is not new for the national system. Codification of Ukrainian information legislation has been ongoing for three decades. The development of the Ukrainian Information Code is taking place under the conditions of the ongoing difficult socio-political and economic crisis.

The situation with the development of the Ukrainian Information Code is complicated by the lack of uniformity of approaches to determining the goal of its adoption. Some scientists point to the need for legal regulation of technology of circulation of information, others stand for the establishment of mechanisms for the implementation of the right to information. The effectiveness of the functioning of any legislative act, including the Information Code, directly depends not only on the manifestation of political will, but also on the adherence to the procedure of public discussion of its draft, as well as the achievements of legal science, the conceptual foundations of its development (Opryshko, 1999).

The main content of the draft of the Information Code of Ukraine requires its division into the General and Special Parts (Kovalenko, 2013). According to L.P. Kovalenko, to the General Part of the Information Code of Ukraine should be it is necessary to consider the issues of determining the grounds for acquiring information rights and duties, peculiarities of exercising information rights and exercising functional duties to establish the specifics of their protection. Within the General Part of the Information Code of Ukraine there should be a normative definition of terminological categories.

The content of the Special Part of the Draft Information Code of Ukraine must meet the requirements of the tasks of normative regulation of the peculiarities of certain types of information circulation (in particular, scientific and technological), scientific and technical information, personal data bases and access to them, electronic court documents, use of electronic digital signatures, etc.) (Kovalenko, 2013).

Thus, the regulatory framework of the security regime of public information services should be defined as a distributed set of legislative and regulatory acts, the current state of which requires the active implementation of processes on the systematization of legislation to achieve the proper level of efficiency in the implementation of the right to information.

Within the framework of this study it is suggested that the category of public information services means special software that provides access of legal entities and individuals to national and regional information systems of state authorities and local self-government.

The system of entities responsible for ensuring security of public information services in Ukraine includes such bodies of state power or their structural subdivisions as: the Ministry of Information Policy of Ukraine, the Ministry of Digital Transformation of Ukraine, the State Agency for Electronic Government of Ukraine, the Committee of the Verkhovna Rada on Information and Communication, the Committee of the Verkhovna Rada of Ukraine on Digital Transformation of Ukraine, the State Agency for Electronic Government.

The State Service of Special Communication and Information Protection of Ukraine, the State Statistics Service of Ukraine and others that have the task of ensuring the implementation of the state information policy and information security of the public administration bodies. Such bodies of state power as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the President of Ukraine are obliged to establish the basic principles for the functioning of the system of public information services.

The underlying principles of the functioning of public information services are defined by a system of laws and regulations that can be conditionally structured according to the level of legal force: 1) legislative acts that establish the core principles of information dissemination about the activities of the bodies of state power and local self-government (for example, the Law of Ukraine «On the Regulations of the Verkhovna Rada of Ukraine») (Law of Ukraine, 2010),which determines the order of work of the Verkhovna Rada of Ukraine, its bodies and officials, the rules of formation, organization of activities and termination of activities of deputy factions (deputy groups); 2) Legislative acts that establish the guidelines for ensuring the security of public information services (for example, this is the Order of the Supreme Council of Ukraine №699 of May 19, 2015 «About web-resources of the Verkhovna Rada of Ukraine», which defines the principles of transparency and openness of the activities of the representative body, aimed at ensuring effective reporting of deputies to the voters, wide involvement of citizens in the adoption of state decisions).

The scope of responsibilities of the Ministry of Digital Transformation of Ukraine in the field of security of public information resources in accordance with regulatory and legal acts is to perform such tasks as: organizing the interaction between the holders of state electronic information resources; ensuring the security of the integrated system of electronic identification; organizing the activities of the unified web portal of the electronic government and the unified state web portal of accessible data; national registry of electronic information resources; the single state web portal of electronic services; formation and maintenance of the Registry of administrative services and coordination of activities of bodies that have established centers for the provision of administrative services (Law of Ukraine, 2019).

The State Agency for Electronic Governance of Ukraine, which operates in accordance with the requirements of the Decree of the Cabinet of Ministers of Ukraine of 01.10.2014 № 492, has an important role in the system of ensuring the security of public information services (Law of Ukraine, 2014).

The responsibilities of the State Agency for Electronic Governance of Ukraine shall be focused on: Ensuring the consolidation of practices of implementation of legislation on the issues within its competence and development of proposals for improvement of legislative acts, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine and submitting them for review by the Cabinet of Ministers of Ukraine under the established procedure; Organization of analytical and monitoring surveys of the development of the information society, electronic government and the sphere of informatization; digital expertise of draft laws and regulations on informatization, electronic governance, formation and use of national electronic information resources, development of the information society, electronic democracy, provision of administrative services or digital development; implementation of registration of state electronic registers, cadastres, state and other mandatory classifiers in the National Register of Electronic Information Resources as a kind of public information services; Ensuring the development of the Unified Web Portal of the Cabinet of Ministers of Ukraine with the possibility of integration of information resources of the central and local bodies of executive power, which are available on the Internet, as well as coordination of the activities of the bodies of executive power associated with the creation and integration of electronic information systems and resources into the central web portal of the bodies; Organization of functioning of the «Single Window for Electronic Record Keeping» system; organization of management of the address space of the Ukrainian segment of the Internet; implementation of the National System of Indicators for the Development of the Information Society; Organization of the appropriate training, preparation and implementation of areas to improve the system of training and retraining of specialists in the field of informatization, electronic government.

The system of ensuring security of public information services includes not only the central bodies of executive power, but also the territorial bodies of state administration and local self-government bodies. The basic principles for ensuring information security requirements are established in accordance with the provisions of the current legislation of Ukraine, including the provisions of the Law of Ukraine «On Local Self-Government in Ukraine» (Law of Ukraine, 1997). Also, the duties of local authorities in the field of ensuring security of public information services include: the authority to request and receive information from enterprises, institutions and organizations that are not in communal ownership of the respective territorial communities on the issues within the competence of local self-

government bodies; responsibility for the acceptance of the minutes of the meetings of the governing bodies of the territorial administrations of the bodies of state power; cooperation with law enforcement agencies in combating criminal offenses; support of the activities of the State Service of Special Communications and Information Protection of Ukraine.

The system of subjects belonging to the sphere of security of public information services includes, apart from the authorities, legal entities of private and public law (in particular, such are mass information media on the subject of disclosure of electronic data bases).

Thus, active participants in foreign information relations are the system of law enforcement agencies, including the National Police, the State Service of Special Communications and Information Protection of Ukraine and other organizations, administrative and legal status of which is defined by special legal acts.

The functioning of public information services is an inseparable part of the effectiveness of the state administration functions. The very introduction of public information services, as noted by I.V. Lopushynsky, allows you to adjust the sub-activity in the implementation of the functions of the state, which requires one of the priority areas of strategic development of modern state (Lopushinsky, 2018).

According to the Regulation on Electronic Interoperability of State Electronic Information Resources, a number of top-priority public information services are set to be listed in the National Register of Electronic Information Resources: the National State Register of Legal Entities, Individual Entrepreneurs and Public Formations; the State Register of Property Rights on Non-Tangible Property; the State Register of Civil Status Acts; the State Register of Trusts; the State Register of Tangible Assets and the State Land Cadastre; the Unified State Demographic Register; Unified Register of Individuals Taxpayers; Register of Income Taxpayers; the Unified Automated State Register of Persons Eligible for Benefits; the Unified Information System of the Ministry of Internal Affairs; Unified State Register of the Ministry of Internal Affairs for registered vehicles and their owners; State Register of Mandatory State Social Insurance; State Register of Voters; the Unified State Register of Court Decisions; Unified Register of Documents, which give the right to carry out preparatory and construction works and confirm the commissioning of the completed construction objects, the notification on the return for completion; The Electronic System of Health Protection; the Electronic State Electronic Database of Education; the Unified Register of Objects of State Ownership, the Electronic System of Health Protection, the Unified State Electronic Database of Education (Law of Ukraine, 2016).

State Register of encumbrances of movable property is defined as a single computer database of data on occurrence, change, termination of encumbrances, as well as on enforcement of encumbrances on the subject of encumbrances, to ensure fulfillment of obligations and protection of rights of legal entities and individuals with regard to tangible property and to provide information on availability or absence of encumbrances on tangible property in the interests of these entities.

The holder of the State Register of encumbrances of tangible property is the Ministry of Justice of Ukraine, which is currently responsible for its maintenance. Security of this public information service is the responsibility of the appropriate state enterprise affiliated with the Ministry of Justice of Ukraine. Registrars are a colony of entities authorized by the Ministry of Justice of Ukraine to accumulate information about the occurrence, change, termination of suspensions, as well as application of enforcement for suspensions, to accept applications, to issue certified copies of the Register and perform other functions(Leheza *et al*., 2021).

Despite the large number of public information services, the administrative and legal regulation of their functioning is inadequate and requires the introduction of reforms.

One of these problems is the lack of a systematic structural approach to the definition of regulatory conditions for the safety of public information services, which must be included in a separate legislative act. The basis for determining the structural content of the draft legislative act on public information services should be a substantive classification of registries based on a number of criteria, among which we should distinguish: the purpose of the register; the scope of use of the register data; the person authorized to maintain the register; specifics of access to the databases of the register; the duration of its operation; billing for providing of the register information; fundamentals of creating the register (the purpose of the register); specifics and peculiarities of information interactions of the persons appointed to complete the data bases. Therefore, one of the main directions of development of the legal system of Ukraine is the active involvement of law-making processes in the development and adoption of a separate legislative act «About Public Information Services» which must contain the principles of their creation, operation, maintenance, use, security of access; Formulate a general basis for the management of these processes (Blinova, 2019).

The mentioned draft law should stipulate the principles of security of public information services, which include: The rule of law and respect for the rights and legitimate interests of the private person; respect for the national interests of Ukraine as a criterion for limiting access to certain databases; openness, accessibility, stability of the state information environment; Public-private partnership; validity of legal liability

mechanism for failure to comply with information security requirements; international cooperation in the field of information; implementation of effective forms of public control in the field of security of public information services.

Another gap in the administrative and legal security of public information services is the lack of basic provisions to support the establishment of information cooperation between public administration bodies, and certain bylaws are in place. The order of exchange of information between the Ministry of Revenue and Duties of Ukraine, the Pension Fund of Ukraine and the funds of mandatory state social insurance may be an example of a by-law regulatory act on the provision of information exchange by the public administration bodies.However, a systemic problem of the state of administrative and legal security of public information services is the lack of conceptual framework of functional interaction between holders of information, for the formation of databases of which there is either public interest or regulatory request (Leheza *et al*., 2020).

In particular, in the Order of exchange of information about the information that contains signs of labor exploitation of undocumented employees and violations of labor laws, approved by the Decree of the Board of the Pension Fund of Ukraine № 11-1 on May 29, 2017 the system of informational interaction at the central and territorial level is defined, the scope of their powers, specifics of staffing and maintenance of certain public information services are established, but there are no normatively established provisions for ensuring communication of such subjects of public powers (Halaburda *et al.,* 2021).

Conclusion

To ensure the complexity of legal regulation of public relations in the field of security of public information services, it is necessary to develop a separate legislative act. Such an act must be an official regulatory act «On Public Information Services», which should enshrine the principles of functioning of the public administration bodies, their conceptual and systemic interaction. The draft Law of Ukraine «On Public Information Services» must include the principles of information security, which include: the rule of law and respect for the rights and legitimate interests of the private person; respect for the national interests of Ukraine as a criterion for limiting access to certain databases; openness, accessibility, stability of the state information environment; state-private partnership; efficiency of legal liability mechanism for failure to meet information security requirements; international cooperation in the information sphere; implementation of effective forms of public control in the field of security of public information services.

Ensuring the effectiveness of the mechanism of administrative and legal regulation of the functioning of public information services requires the establishment of an imperative requirement for normative consolidation of not only the principles of maintaining public registers, but also the principles of informational interaction between their holders and managers.

Absence of well-established informational interaction between public administration bodies leads to inefficiency of the system of public information services on the basis of transparency, openness, accessibility and security.

The level of intensity of the increase in the volume of information law relations in Ukraine is conditioned by general tendencies of the modern global information society. All scientists investigating specific legal regulation of relations in different spheres recognize the importance of information security of legal relations subjects as the basis for their functioning. Regulation of information relations is more or less a necessary element of all legal acts.

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International guidelines for managing investigation and collection of evidence of war crimes

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Abstract

The article is devoted to the peculiarities of the international regulations of the organization of the investigation and collection of evidence of military crimes. The objective is to analyze the effective minimization of the impact of destructive factors on the investigation of military crimes, so it is necessary to create a special governmental institution to cooperate with the International Criminal Court with the appointment of national coordinators in relation to amendments to the Code of Criminal Procedure of Ukraine, which provides for the possibility of investigation. The methodological basis of the research was the methods and techniques of scientific knowledge, specifically the main method of research was the dialectical method. It is concluded that the concept of investigation of military crimes committed in armed conflict and criminal prosecution of perpetrators can be defined as of important scientific and practical significance, a holistic interdisciplinary comprehensive theoretical system of activities under special conditions, which generally combines theoretical provisions on specific patterns in the field of legal support, organization of investigation and collection of evidence of military crimes. : search, arrest and transfer of officials involved in military crimes and implementation of international proceedings against the accused.

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Reglamento internacional de la organización de investigación y recolección de pruebas de delitos militares

Resumen

El artículo está dedicado a las peculiaridades del reglamento internacional de la organización de la investigación y recolección de pruebas de delitos militares. El objetivo consiste en analizar la minimización efectiva del impacto de los factores destructivos en la investigación de delitos militares, por lo que es necesario crear una institución gubernamental especial para cooperar con el Tribunal Penal Internacional con la designación de coordinadores nacionales en relación con las enmiendas al Código de Procedimiento Penal de Ucrania, que prevé la posibilidad de investigación. La base metodológica de la investigación fueron los métodos y técnicas del conocimiento científico, específicamente el método principal de la investigación fue el método dialéctico. Se concluye que el concepto de investigación de delitos militares cometidos en conflictos armados y enjuiciamiento penal de los perpetradores puede definirse como de importante significado científico y práctico, un sistema teórico integral interdisciplinario holístico de actividades en condiciones especiales, que generalmente combina disposiciones teóricas sobre patrones específicos en el campo de apoyo legal, organización de la investigación y recolección de pruebas de delitos militares: búsqueda, detención y traslado de funcionarios involucrados en delitos militares e implementación de procesos internacionales contra los imputados.

Palabras clave: derecho internacional humanitario; delitos militares; investigación penal; recolección de pruebas; proceso judicial adecuado.

Introduction

Prohibition of criminal offences against the peace, security of humanity and international legal order under present-day conditions is necessitated not so much by the incidence of criminal offences as by the extremely high level of their social danger. For example, Article 7 of the Law of Ukraine “On Fundamentals of National Security of Ukraine” defines that criminal

activities against the peace and security of humanity are currently the main real and potential threats to the national security of Ukraine and social stability (Law of Ukraine, 1993).

Soon after its independence was declared, Ukraine chose the course towards ensuring the fundamental principles of protecting human rights and freedoms, firmly established in the international community. In 2001, for the first time in the history of the national criminal legislation, the new Criminal Code of Ukraine was supplemented by Chapter XX "Criminal offences against peace, security of mankind and international legal order".

Armed conflicts are mainly provoked by existing contradictions that cannot be resolved in a peaceful, non-military way. Present-day armed conflicts are usually caused by ethnic, national, religious interests of a large group of people and contradictions originated therefrom. According to the Stockholm International Peace Research Institute, a half of 205 major armed conflicts taking place from 1989 to 1994 were caused by the power struggle in the country, the rest being related to control over the territory, struggle for autonomy, national and ethnic problems, and other antagonistic contradictions.

According to the United Nations Organization, the conflict in eastern Ukraine has been one of the deadliest in Europe since World War II. During the War in Donbas, 13,000 people have died, 28,000 have been wounded, and approximately 1.8 million inhabitants of Donbas and Crimea have become internally displaced persons. Ukraine has suffered immense financial and economic losses. Twenty-seven percent of Donbas's industrial potential were illegally transferred to the Russian Federation, including the equipment of 33 local industrial giants (The war in the Donbass, 2019).

War crimes are directly related to the international criminal law. They are particularly dangerous to humanity, undermining the international security and law enforcement system. Longstanding efforts of the international community have yielded tangible results, represented in international legal norms that establish the grounds and conditions of responsibility for crimes against the peace, security of humanity and international legal order. After the Rome Statute was signed in 1998, the International Criminal Justice Authority, which is responsible for prosecuting those charged with genocide, war crimes, crimes against humanity and aggression, has been officially operating on a permanent basis since July 1, 2002 (Bibik and Kulyk, 2014).

As is well known, international organizations have been created by states to jointly solve global problems. The essence of the latter is that states are not able to solve them on their own. The problem of armed conflicts and violations of humanitarian law that occur during armed conflicts, especially against the background of recent events in Ukraine, Syria and the Middle East, is definitely the most vivid example of the fact that these problems cannot be solved by only one, even the most powerful, state.

At the 2005 World Summit, United Nations member states recognized that genocide, criminal offences against humanity, and war crimes are so dangerous that the world population needs collective international protection against these actions. In this regard, the international community, acting through the United Nations, has committed itself to using diplomatic, humanitarian and other peaceful means to protect the population from international and, in particular, war crimes (Art. 139 of the Outcome Document). The states have also agreed to support United Nations efforts to provide early warning of these actions. At the same time, the obligation of members of the international community to stop mass violations of human rights cannot be considered an innovation in international law and practice of international relations.

Thus, in the 21st century, the world community keeps emphasizing the universal nature of actions against war crimes, and the United Nations remains the leading international organization aimed to solve the problems evoking concerns of the entire world community.

Unlawful acts committed in the context of an armed conflict and prohibited by the whole international community must not go unpunished. Their prevention must be ensured both by measures taken at the national level and by intensified international cooperation. Disclosure and investigation of international proceedings require international cooperation of government institutions to search for international criminals.

The need for such cooperation determines the requirements of practical activities of national law enforcement agencies to seize evidence in the territory of other states, to ensure implementation of statutory criminal procedure functions and administration of justice. The latter is guided, on the one hand, by international legal norms and, on the other hand, by the provisions of national criminal and criminal procedure legislation. According to scientific research, the nature, concepts and objectives of international cooperation between public authorities have undergone significant changes recently.

The reasons for low efficiency of law enforcement activities are quite numerous, including the lack of methods for investigating transnational and international crimes, inadequate qualifications, lack of relevant skills to detect criminals, manage and conduct investigative (search) activities while investigating war crimes.

1. Materials and methods

Methodologically the study is based on the methods and techniques of scientific knowledge. Their application is determined by a systematic

approach, which enables to consider the problems of the research in the integrity of their social content and legal form. The key method of the research is *dialectical method*, the laws, and categories of which made it possible to define the essence of war crimes, as well as the peculiarities of international guidelines for their investigation, considering national legal regulatory specificities of particular procedural actions.

The laws of formal logic and its methods, such as *induction* and *deduction*, *analysis,* and *synthesis*, allowed determining the structural and logical scheme of the scientific research, identifying the properties and features of the legal nature of war crimes and the problems of their criminalization at the national level. *System-based analysis*, *systematic structural method* and *formal logic method* enabled to clarify the conceptual basis of managing investigation of war crimes, subject to proper legal procedure in accordance with the customary international law and its practical application in an armed conflict. *Dogmatic method* made it possible to interpret legal categories and clarify the concepts.

Functional method allowed identifying the stages of investigation management, as well as conceptual organizational measures going beyond individual criminal proceedings, non-acceptance of which has a direct destructive effect on war crimes investigation. *Typological method* was applied when clarifying the appropriate legal procedure for investigation management and collection of evidence of committed war crimes. *Modeling and forecasting methods* enabled to formulate proposals on improving particular provisions of national legislation in accordance with the requirements of international humanitarian law and its practical application in the investigation of criminal offences committed in an armed conflict. *Sociological and statistical methods* were applied when analyzing and generalizing the empirical basis of the study.

2. Analysis of the recent research

The research of international humanitarian law and criminal procedure both in Ukraine and abroad is currently represented by a significant number of works analyzing the processes of formation and development of international criminal justice system, as well as specificities of managing investigation of war crimes and collecting evidence thereof. Research in this area includes the works of M. Antonovych, V. Vasylenko, M. Hnatovskyi, N. Driomina-Volok, N. Zelinska, O. Kasyniuk, I. Kolotukha, V. Pylypenko, I. Strokova, K. Ambos, J. Bischoff, G. Boas, W. Morris, J. Stewart, H. Thams, O. Trifftener, M. Scharf, etc.

The research of the abovementioned authors on this problem is of important theoretical and practical value. The ideas they formulated

found their application in legislation being positively perceived by the international law enforcement practice. At the same time, some works do not take into account current rapid development of judicial practice in this area, which necessitates reassessment of previously made conclusions due to the new interpretation of particular provisions of international treaties or construction of new approaches. Besides, most of these works lack systematic approach to the management of investigating war crimes committed in a military conflict.

This poses a need for a new theoretical comprehension of management and development of interagency and interstate cooperation in the investigation of war crimes, taking into account current trends in the development and interpretation of international humanitarian and criminal procedure law.

These circumstances determined the choice of the research topic covering a number of issues, the study of which has both theoretical and practical significance.

3. Findings of the research

3.1. Legal nature of war crimes and the problem of their criminalization at the national level

By their nature, war crimes are one of the most severe and serious offences known to humanity. Under international law, the state in the territory of which war crimes are committed, must take the most active part in the investigation and prosecution of people charged with the criminal offence (Nazarchuk, 2020). At present, Ukraine, however, is not always able to respond adequately to hostilities on the temporarily occupied and adjacent territories.

For example, the Criminal Code of Ukraine, except Art. 438, has no detailed rules determining illegality of particular actions in an armed conflict. There is also neither explanation of war crimes, which are of minor, medium, and severe gravity, nor the extent of responsibility for their commission. This problem requires a comprehensive solution. Some lawyers rightly consider adoption of the law on transitional justice to be the way out of this situation (Bida, 2021).

Any of the following acts is considered a war crime according to the international community:

1. Intentionally directed attacks against the civilian population in a combat zone.

2. Committing acts or threats of violence to spread terror among the civilian population.
3. Deliberate launch of an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause loss of life, injury to civilians or damage to civilian objects.
4. Indiscriminate attacks affecting non-defended localities or demilitarized zones.
5. Intentional attack of a person who is recognized to be hors de combat.
6. Deliberate attacks against medical personnel, equipment, and facilities.
7. Intentional launch of an attack in the knowledge that such attack will cause widespread, long-term, and severe damage to the natural environment.
8. Use of weapons, projectiles and materials causing superfluous injury or unnecessary suffering.
9. The use of poison or poisoned weapons or asphyxiating, poisonous or other gases and all analogous liquids, materials, or devices.
10. The use of chemical or biological weapons.
11. The use of explosive bullets or weapons, the primary effect of which is to injure.
12. The use of booby-traps or mines (which can affect both combatants and civilians) in places with a high probability of civilians (Koval and Avramenko, 2019).

However, objectivity in determining grounds for application (criminalization) or refusal to apply (decriminalization) criminal law influence should be recognized as an ongoing problem of criminal law. It should be emphasized that, unfortunately, persons guilty of committing most war crimes nowadays manage to avoid criminal prosecution, one of the reasons being inadequate legislation and its inconsistency with international norms. Current Art. 438 of the Criminal Code of Ukraine ("Violation of rules of the warfare") is quite generalized, therefore national legislation should specify elements of war crimes, defining all serious violations of international humanitarian law as war crimes. Thus, there is an obvious need to specify elements of war crimes in national legislation (Nazarchuk, 2020).

When applying Art. 438 of the Criminal Code of Ukraine, it is necessary to focus on the practice of international criminal courts, doctrines,

authoritative statements of international humanitarian law and provisions of international treaties. Besides, the list of acts that can be considered violations of rules of the warfare does not need to strictly coincide with the correspondent list in Art. 8 of the Rome Statute, or the list of serious violations of international humanitarian law under the Geneva Conventions, or Additional Protocol 1 thereto. The list can be expanded, but not arbitrarily, to find support in international practice. Otherwise, Ukraine will almost surely face legal proceedings in the European Court of Human Rights initiated against it.

At present, it is necessary to state the inadequacy of particular norms of the Criminal Code of Ukraine. There is an urgent need to review the articles of Chapters XIX-XX of the Code in order to include the norms establishing criminal liability for all the actions against the interests of the people of Ukraine.

It seems reasonable to focus on the list of actions, which can be qualified as violations of the laws of the warfare, proposed in the bill "On Amendments to Certain Legislative Acts of Ukraine as to Conforming Criminal Legislation to the Provisions of International Legislation" No. 9438. This list meets international standards and responsibilities assumed by Ukraine under international treaties to criminalize violations of international humanitarian law.

3.2. Conceptual bases for managing investigation of war crimes

Fighting crime in a military conflict is impossible without proper management of pre-trial investigation and solution of criminal offences, which predetermines the entire further process of criminal proceedings. For example, R.S. Belkin identified four stages of criminal investigation. The first is the highest and the most general stage treating investigation as a specific form of activity of pre-trial investigation bodies and inquiry of all the agencies. This stage is defined as a set of measures ensuring effective operation of system elements and fulfillment of the assigned tasks.

The second, "managerial", stage of investigation covers specific content and represents the primary function of investigative bodies. This stage is defined as a set of measures ensuring optimal structure of these bodies, the required level of management, efficiency of their performance and improvement of their operating methods.

The third stage of investigation management is the stage of applying forensic methods, i.e. management of a particular act of investigation (investigation of a particular criminal offence). This stage is defined as a set of measures aimed to create optimal conditions for determining and applying recommendations, which are the most effective and appropriate for a particular investigation to achieve the highest possible results with a minimum expenditure of time, efforts and resources.

The fourth stage of investigation management is called tactical and covers management of a separate investigative action or managerial and technical measures within a specific act of investigation. This stage is defined as a set of measures ensuring selection and implementation in a particular situation of the most effective and appropriate criminological and tactical methods and techniques to achieve the objectives of a specific investigative action.

Managing investigation of a particular criminal offence is an integral part of forensic methodology. It includes traditional measures taken within a separate criminal proceeding and aimed to create optimal conditions for determining and implementing recommendations of forensic methodology, which are the most effective in a particular investigative action, in order to achieve the highest possible results with a minimum expenditure of time, efforts and resources. However, when investigating war crimes committed by the parties to an armed conflict, other organizational measures going beyond particular criminal proceedings must be taken.

Management of war crimes investigation, like any activity, entails internal subordination, coherence, and cooperation. The main objective of this process is its effectiveness (Skuba, 2017). In addition to the single goal, which is the main in the management of interaction, it is necessary to take into account such criteria as specificities of cooperation of investigative, operational and other units with each other; timeframes for performing joint activities; functions of interacting units; connection with the system of bodies carrying out operational search activities; degree of confidentiality; stages of implementing joint investigative and operational search measures; subjects of interaction; forms of mutual information exchange (Yukhno, 2012).

Given the specifics of committing criminal offences in an armed conflict, interaction is one of the crucial factors in successful investigation of this type of socially dangerous actions. Their detection and investigation involves improving legal regulations, as well as organizational and tactical component of interaction between the investigator and other subjects of investigation (Blahuta *et al.*, 2014). In this case, viability and effectiveness of interaction are determined by investigative situations developing at a particular stage of investigation in criminal proceedings, and therefore, aimed at identifying the facts in issue.

Bilateral and multilateral international treaties play a significant role in regulating management and interaction of law enforcement and judicial bodies during investigation of criminal offences at the interstate level. These treaties include the European Convention on Mutual Assistance in Criminal Matters (1959); the European Convention on the Transfer of Proceedings in Criminal Matters (1972); the Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases of January 22, 1993, etc

(Smyrnov, 2003; Law of Ukraine, 1998; Law of Ukraine, 1995; Law of Ukraine, 1994).

Adoption of the new Criminal Procedure Code of Ukraine regulated a number of issues of international cooperation in criminal proceedings and defined its main forms: international legal assistance in the conduct of procedural actions (Chapter 43 of the CPC); surrender of persons who have committed a criminal offense (extradition) (Chapter 44 of the CPC); takeover of criminal proceedings (Chapter 45 of the CPC) (Law of Ukraine, 2012).

3.3. Appropriate legal procedure for war crimes investigation in accordance with customary international law and the practice of its application in an armed conflict

The analysis of work of the International Criminal Court (hereinafter – ICC) enables to identify conceptual organizational measures going beyond particular criminal proceedings, non-acceptance of which has a destructive direct effect on war crimes investigation. These measures include: a) defining the strategy and management of investigation; collecting evidence; b) determining the structure of investigative bodies and principles of their work organization; c) defining the procedure for creating an interagency investigative operations group (hereinafter – IIOG), material and combat service support for their activities; d) ensuring the right to qualified legal protection and the procedure for involving other participants of criminal proceedings (translators, specialists, witnesses); e) determining the principles of information and analytical work, management of controlling, accounting, reporting; f) managing interaction and cooperation between states, international and national bodies of criminal justice in the process of investigation and collection of evidentiary information; g) defining measures to raise skill level of personnel; h) using expert knowledge in field conditions; i) managing forensic examinations and activities of expert institutions, etc.

Concerning the strategy of managing investigation and collecting evidence of war crimes, it should be noted that representatives of military and political leadership of states do not directly participate in war crimes, give orders to commit them, sign relevant documents etc. Therefore, in our opinion, when managing collection of evidence of war crimes committed by representatives of military and political leadership of states, the main efforts should be focused on collecting sufficient evidence to justify accusation of persons most responsible for committing the criminal offences and holding the highest political and military positions.

It stands to reason that in order to prove their guilt, it is necessary to establish connection of public policy makers with a set of criminal offences

committed in different areas of an armed conflict, to prove that they developed and implemented a strategic criminal plan or it was performed under their direct leadership, i.e. to adopt the doctrine of "common purpose", when several criminals act together to achieve a goal.

At the national level, members of the operational investigations group directly interact with each other, agree on the main directions of pre-trial investigation and procedural actions, and exchange the obtained information. The Prosecutor General's Office of Ukraine acting as the initiator of creating a joint investigations group carries out coordination of their activities in the territory of Ukraine. In addition to representatives of the law enforcement agencies from the EU member states involved in the joint investigation teams, there is a possibility to involve officials of Europol and Eurojust within the EU (European Convention, 2011; Shostko and Ovcharenko, 2008).

Being timebound and having neither opportunity nor resources to manage simultaneous investigation of a large number of criminal proceedings on war crimes committed in different areas of an armed conflict, each IIOG should be assigned the task of rapid and high-quality investigative (search) actions and collecting maximum physical evidence. At the same time, IIOG prosecutors should coordinate investigation of various criminal proceedings, ensure effective exchange of information, and report promptly and competently its suspicions to the main organizers of war crimes.

In case the obtained evidence proves the guilt of high-ranking war criminals, criminal proceedings should be immediately initiated against them. Otherwise, investigators will focus on searching and prosecuting low-ranking war criminals. Thus, collecting testimony from separate war criminals with a detailed description of place and nature of the criminal offence, they will omit the facts proving involvement of political and military leaders of the opposing side of an armed conflict.

The process of managing investigation of war crimes and collecting evidence may involve various forms of interaction between law enforcement agencies. For instance, when investigating war crimes, it may be difficult to collect evidence outside the territory of a particular state, i.e. in the territory of the other party, with respect for the rights of the participants in criminal proceedings.

The fact that many states have not ratified or signed the Rome Statute of the ICC so far is a serious obstacle to the prosecution of war criminals. In this regard, it is necessary to take effective measures against the states that do not want to cooperate with bodies investigating war crimes. Therefore, we propose to establish arrangements for proceedings in this category of cases based on the principle of universal jurisdiction.

Customary international law requires states to exercise their jurisdiction and gives them the right to exercise universal jurisdiction over war crimes that do not belong to grave breaches. Universal jurisdiction allows investigating war crimes without regard to where they were committed and the nationality of the perpetrator. Universal jurisdiction distinguishes between the criminal offences that states are obliged to stop on the basis of universal jurisdiction (mandatory universal jurisdiction) and the criminal offences that states have the right to stop (optional universal jurisdiction).

Universal jurisdiction may be provided for by the norms of international customary or treaty laws. If universal jurisdiction is established by treaty, it is usually mandatory. Universal jurisdiction can be exercised either through adoption of internal legislative acts (legislative universal jurisdiction), or through investigation of persons suspected of committing offenses and their transfer to the court (law-enforcement universal jurisdiction). The grounds for exercise of universal jurisdiction over war crimes are present in both international treaty and customary laws.

In some cases, the parties to the conflict make it clear that they refuse to cooperate and will obstruct the investigation in any way. This results in an active opposition to managing investigation and collecting evidence of war crimes committed by the warring parties of an armed conflict.

This is expressed through concealing traces of war crimes, namely through destruction of relevant documentation, rejection to issue it to investigative groups with the consent or acquiescence of member-state's leadership of an armed conflict, etc. For example, former ICTY Prosecutor Carla del Ponte tells about opposition of the ICTY by the Central Intelligence Agency, the United Nations and NATO. Such behavior of the authorities is understandable and can be explained by the fact that it can damage further payment of reparations.

For instance, heads of states do not want investigative bodies to obtain important archival and documentary testimonies (such as meeting schedules, agenda records, protocols, deciphering's, verbatim records of meetings and conferences, official orders, reports, purchase orders, inventory, payment information, other correspondence) that reveal internal mechanisms of war crimes in their countries, as well as involvement of political, military, and reconnaissance groups and police in secret war crimes.

If this is the case state leaders restrict access of investigative bodies to a number of archives, which contain the abovementioned and other documents proving the involvement of politicians, military bodies and police in war crimes, and provide unrestricted access to minor archives, destroy requested documents under a local ordinance requiring automatic destruction of documents after a certain period of storage, or impose other obstacles.

If heads of states do not assist investigative bodies in collecting and analyzing physical evidence, mass grave sites, identifying and interrogating crucial witnesses, including high-ranking officials, or persons hiding and remaining under their jurisdiction, they may use threats, blackmail or other ways to obstruct identification of witnesses willing to testify; restrict access to witnesses (for example, by threatening that, under local laws, any communication or even conversation with investigators involves the risk of criminal prosecution for allegedly disclosing "state" or "military secrets"); allow witnesses to testify only in case investigators issue a summons to the authorities of their country; forbid investigators to work in the territory under their jurisdiction; refuse to cooperate with the ICC. And in such case, the ICC cannot force the state to cooperate.

To effectively eliminate or minimize consequences of these destructive factors it is necessary to establish a special governmental institution for cooperation with the ICC, appoint national coordinators, make amendments in the Criminal Procedure Code of Ukraine, ensure the possibility to establish an institution of joint IIOGs, i.e. on the basis of relevant international treaties, providing for management of collecting evidentiary information on war crimes, to form joint groups of ICC members and national criminal justice authorities, balancing between the systems of continental and Anglo-Saxon laws, which will definitely contribute to impartiality of investigation.

It is necessary to share views on a regular basis with the representatives of the international community, placing priority over political considerations and short-term interests of states, to ensure political assistance from the international community in finding and managing collection of evidence on war crimes and arresting war criminals, for example, employing sanctions and creating direct dependence of economic assistance on cooperation with the ICC; to ensure wide involvement of representatives of international organizations (OSCE, Human Rights Watch, Doctors Without Borders, etc.) and various media in investigative actions, since the activities of international criminal justice provide for privileged evidence, for example, data are handed over by the International Committee of the Red Cross.

Management and methods of investigation, collection of evidence of war crimes committed by the parties to an armed conflict are directly affected by the following destructive factors:

1. rapid change in the operational situation.
2. frequent redeployment of military units and subdivisions.
3. death, injury and captivity of witnesses, victims, suspects during the fighting.
4. change of scenery as a result of bombing, artillery or mortar fire, capture by the enemy.

5. minefields, sniper attacks, etc.
6. a large number of cases investigated within a limited time period.
7. bringing to criminal responsibility the parties to an armed conflict.
8. a significant time gap between the moment of committing mass murders and starting of examining mass grave sites, which prevents identification due to decomposition of bodies.
9. problems with assembling evidence base, since shootings were performed in the places excluding any unwanted witnesses.
10. selective providing of criminal justice bodies with various military information, such as documents, objects, drone pictures, decoded recordings of radio interceptions, etc. concerning events that could become or have already been the subject of investigation.
11. politicization of investigation process and conducting investigation on the border line between national sovereignty and international responsibility, in the area between legal and political spheres.
12. the way local population perceives investigation of war crimes at the national level and administration of justice for war crimes against persons of the opposite party within the state may lead to public dissatisfaction and hostility towards criminal justice bodies, which will diminish the importance of the ICC and national criminal justice bodies.
13. illegal comparisons with the actions of the other party and the use of "spilled blood" factor to evade criminal liability for war crimes, such as "the right to commit illegal acts against the enemy" for unfounded accusations of "cowardice" of investigative bodies not directly involved in hostilities.
14. investigation of war crimes only in respect of one of the parties to the conflict, etc.
15. the need to ensure an impartial and neutral investigation so that neither party bears "special" responsibility.
16. unwillingness of the parties to an armed conflict to obey lawful requirements of the judiciary and international legal provisions.
17. problems of ensuring testimony of high-ranking foreigners.
18. attempts to stage a fake war crime "committed" by the enemy.
19. obstruction of investigation.
20. the possibility of armed resistance of the suspect or his comrades during detention.

21. combat fatigue of the accused, suspects, victims, witnesses, etc.
22. slow investigation of this category of criminal offences, which may exceed all reasonable deadlines, and dragged-out detentions.

Specific methodology of investigating war crimes committed in an armed conflict consists mainly in the collective (team) method of investigation, "hot pursuit" investigation and special arrangements for investigative (search) actions in an armed conflict. This applies both to traditional investigative (search) actions (interrogation, search, inspection of a crime scene, etc.) and new techniques for criminology, which have found extensive practical application only in locations of an armed conflict (for example, interrogation of war prisoners, examining mass grave sites, analysis of radio transmissions, etc.).

The main evidence in the activities of international criminal justice bodies is the testimony of witnesses, victims, suspects, accused, as well as documents with a widespread practice of their preliminary recording with technical means obtained during interrogations, inspections, searches, and expert examinations.

It is necessary to develop new criminological research techniques, widely applied only in localities of an armed conflict (analysis of intelligence information, bringing into the proceedings a large number of photo, audio and video materials proving commission of war crimes, etc.). Investigative (search) actions should be aimed at identifying particular commissioned officers (pilots, artillerymen, snipers, etc.) who gave and carried out orders on air strikes, shelling and destruction of civilians and settlements, and on other war crimes. Then, on the basis of legislation regulating activity of officials of the state involved in the conflict, it is necessary to define those who are guilty.

To improve efficiency and quality of investigative actions it is necessary to innovate the procedure for performing investigative (search) actions through adapting them to the conditions of an armed conflict, using the latest technologies to capture evidence, broadening and enhancing expert database, improving forms and methods of cooperation with other law enforcement agencies, improving quality and reliability of communications and transport means, etc.

Detection, detention and surrender to court of the officials involved in committing war crimes are extremely complex processes, which are mainly related to contradictory provisions of the Rome Statute of the ICC stating fundamental constitutional and legal prohibitions: 1) to surrender persons to court (Art. 89); 2) to take into account official capacity (Art. 27), which presupposes application of the Statute to a head of state or government, a member of a government or parliament; 3) to exclude from «ne bis in idem» principle (no person shall be tried by the court for a crime for which that person has already been convicted or acquitted by the court).

Reluctance of the parties to an armed conflict to prosecute their citizens, which are war criminals, often treated as "heroes" by the population, as well as lack of a binding effective legal mechanism of search, detention and surrender of war criminals is one of destructive factors of war crime investigation.

In contrast to the norms of national constitutions and criminal laws, prohibiting extradition of citizens, the Rome Statute of the ICC in Art. 89, requesting States Parties to surrender persons to the ICC, makes no exceptions to the transfer of citizens of those countries to which such a request is submitted. According to Art. 89 (1), the Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State in the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the Statute and the procedure under their national law, comply with requests for arrest and surrender (Verkhovna Rada of Ukraine, 1998).

Given the possibility of conflict of national law and provisions of the Statute, Art. 102 differentiates the terms "extradition" and "surrender" (referring to surrender, not extradition, as a special institution of international law, regulating cooperation of states in the fight against crime). According to this Article, "surrender" means the delivering up of a person by a State to the Court, pursuant to the Statute, whereas "extradition" means the delivering up of a person by one State to another as provided by treaty, convention, or national legislation.

At the same time, the practice of international law confirms the fundamental difference between the legal natures and contents of "extradition" and "surrender", creating effective preconditions to avoid amendments to the constitution in case it provides for an absolute prohibition on extradition:

1) the national constitution does not contradict the Statute, therefore there is no need to amend constitution (Republic of Armenia);

2) the national constitution contradicts the Statute, but the contradictions are insignificant, and amendments to the constitution are of general nature recognizing jurisdiction of the ICC, and allowing the ICC to sit within the State's territory (surrender of citizens to the ICC is performed without their extradition). In addition, Art. 88 of the Protocol I Additional (1977) provides for the obligation of States Parties to afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of grave breaches of the Geneva Conventions (1949) and the Additional Protocol I (1977), in particular, in the matter of extradition.

Extradition and mutual assistance in matters of criminal proceedings are provided in Art. 18 and 19 of Protocol II Additional to the Geneva Conventions for the protection of cultural Property in the event of an armed conflict (1954). The need for mutual assistance is particularly evident when states have to prosecute or extradite persons suspected (accused) of committing criminal offences.

Conclusions

To summarize the findings presented above, we can conclude that the concept of investigating war crimes committed in an armed conflict and criminal proceedings of perpetrators is of great scientific and practical significance. It is a comprehensive interdisciplinary integral theoretical system for working in special conditions, which combines doctrines of specific regularities in the sphere of legal support, management of investigation and collection of war crime evidence, search, detention and surrender of officials involved in war crimes, international prosecution of perpetrators.

This concept makes it possible to combine scientific provisions on the activities of criminal justice bodies in an armed conflict into a single system, which, in its turn, contributes to identification of open issues and systematic solution of relevant problems. It is highly important for investigative and judicial practice, since it equips criminal justice authorities with scientifically grounded recommendations on managing investigation of war crimes, and with the methods of carrying out such investigations.

When applying provisions of the Criminal and Criminal Procedure Codes of Ukraine, it is necessary to focus on the practice of international criminal courts, doctrines, authoritative statements of international humanitarian law and provisions of international treaties. Besides, the list of acts that can be considered violations of rules of the warfare does not need to strictly coincide with the correspondent list in Art. 8 of the Rome Statute or the list of serious violations of international humanitarian law under the Geneva Conventions, or Additional Protocol 1 thereto. The list can be expanded, but not arbitrarily, in accordance with the international practice.

The highest form of cooperation between the competent authorities when investigating war crimes, having often transnational nature, is creation and operation of interagency investigative operations groups, the number and personal composition of which are determined by the complexity of a crime, the number of incidents of criminal activity, location of committed criminal offenses, the number of persons involved in the crime, the need to identify and search these persons, the amount of evidence and guidance information, etc.

To effectively eliminate or minimize consequences of factors destructing war crime investigation process it is necessary to establish a special governmental institution for cooperation with the ICC, appoint national coordinators, make amendments in the Criminal Procedure Code of Ukraine, ensure the possibility to establish an institution of joint IIOGs, i.e. on the basis of relevant international treaties, providing for management of collecting evidentiary information on war crimes, to form joint groups of ICC members and national criminal justice authorities, which will definitely contribute to impartiality of investigation.

Customary international law requires states to exercise their jurisdiction and gives them the right to exercise universal jurisdiction over war crimes that do not belong to grave breaches. Universal jurisdiction can be exercised either through adoption of internal legislative acts (legislative universal jurisdiction), or through investigation of persons suspected of committing offenses and their transfer to the court (law-enforcement universal jurisdiction). The grounds for exercise of universal jurisdiction over war crimes are present in both international treaty and customary laws.

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Legal regulation of artificial intelligence and robotic systems: review of key approaches

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Abstract

The aim of the article is to study various approaches to legal regulation of AI artificial intelligence and robotic systems in the European Union, USA, and China. These regions are the world's largest centers of technological development and therefore each of them has perfected a unique approach to legal regulation on the limits, scopes, and proper uses of AI. His achievements are widely used by other countries. The authors used the methods of analysis of scientific documents, laws, and legal regulations. In addition, this article reviews the basic conceptual approaches available in the world for the formation of legal regulation in the field of the use of AI and robotic systems. It is concluded that policies regulating artificial intelligence are not limited to one area and, in general, are intended to protect the rights and freedoms of citizens, regardless of the field of application of AI in the social order.

Keywords: artificial intelligence; robotics; legal status; human rights; technological innovations.

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Regulación legal de la inteligencia artificial y los sistemas robóticos: revisión de enfoques clave

Resumen

El objetivo del artículo es estudiar varios enfoques de regulación legal de la inteligencia artificial IA y los sistemas robóticos en la Unión Europea, EE. UU. y China. Estas regiones son los centros de desarrollo tecnológico más grandes del mundo y, por lo tanto, cada una de ellas ha perfeccionado un enfoque único para la regulación legal sobre los límites, alcances y usos adecuados de la AI. Sus logros son ampliamente utilizados por otros países. Los autores utilizaron los métodos de análisis de documentos científicos, leyes y reglamentos legales. Además, el artículo revisa los enfoques conceptuales básicos disponibles en el mundo para la formación de la regulación legal en el campo del uso de la IA y los sistemas robóticos. Se concluye que las políticas que regulan a la inteligencia artificial no se limitan a un área y, en general, tienen como propósito proteger los derechos y libertades de los ciudadanos, independientemente del campo de aplicación de la IA en el orden social.

Palabras clave: inteligencia artificial; robótica; estatus legal; derechos humanos; innovaciones tecnológicas.

Introduction

The legal and technical regulation of autonomous technologies is being discussed and developed. Many countries have adopted national strategies for developing artificial intelligence and robotics, which, among other things, contain general approaches to regulating their use. Currently, the legislators of many states who declare their intentions to become leaders in this area face an important task of selecting the concept of legal regulation to form their regulatory framework.

There are different approaches to regulation from the US, Europe, and China. On the one hand, these regions are the world's largest centers of technological development. On the other hand, each of them has developed a unique approach to the legal regulation of the above-mentioned relations.

1. Methods

Author study the AI legal regulation and robotic systems in certain countries and regions (EU, USA, and China).

The first paragraph considers the legal framework for regulating the use of AI in EU countries. The main research object is the draft regulation "On harmonized rules on AI (AI Act) and amending certain union legislative acts". The key idea of this document is to apply a risk-based approach in regulation, whose essence is to classify AI-driven systems into different categories depending on their potential threat to health, safety, and fundamental human rights.

The second paragraph examines the specific regulation of public relations and the use of AI systems in the US. Both at the federal and state levels, there are no cross-cutting laws that form a unified legal approach to regulating the area in question. This is a conscious legal policy based on the principle of "ad hoc" regulation that presupposes the regulation of social relations as they naturally develop.

The third paragraph dwells on the legal regulation of using AI in China. The main framework of legal regulation in the country is the "New Generation AI Development Plan" which defines the key goals and principles for developing this sphere of public relations. Despite ambitious concepts and the introduction of innovations, the development of legal regulation in the field of AI-driven and robotic systems is associated with political risks.

2. Results

EU countries are about to adopt a unified end-to-end regulatory act that will affect different spheres of public relations. This regulation should utilize a risk-based approach focused on a person. In this connection, the main criterion is the potential threat posed by AI to individual rights. The advantage of such a regulatory system is that it is not limited to one area and, in general, aims at protecting the rights and freedoms of citizens regardless of the field of AI application. However, this also conditions a disadvantage associated with the fact that an excessive number of regulatory requirements for actors involved in the development, distribution, and use of AI-powered systems can significantly slow down the growth of the industry, which will have a negative impact (at least in economic terms) on the quality of life.

In the US, there are no cross-cutting laws that form a unified legal approach to regulating the area in question both at the federal and state levels. This is a conscious legal policy of the state based on the principle of "ad hoc" regulation that presupposes the regulation of social relations as they naturally develop. Thus, the regulatory legal acts adopted in the US are fragmented and not uniform from the semantic perspective. Legal regulation is not complex and affects certain spheres (for example, transport and medicine) or narrow issues (for instance, hiring discrimination) related to the development and functioning of AI-powered systems. This approach

is beneficial from an economic viewpoint since it does not imply the creation of a massive mechanism of legal regulation. At the same time, there is a risk that a significant number of incidents in the field of human interaction with AI-driven systems will occur before a sufficient regulatory framework is formed in the US.

In China, legal regulation is based on the "New Generation AI Development Plan" which defines the key goals and principles for developing this sphere of public relations. This concept represents only a general model and goals of future legal regulation. Accordingly, it should be considered in connection with other regulatory legal acts. On the one hand, China has adopted ambitious development concepts in the field of AI systems and robotics. This country introduces innovations into public life much more actively than the EU and US due to centralized regulation. On the other hand, their actual implementation is entrusted to private companies and local authorities, and the state retains ample opportunities for control in all spheres.

3. Discussion

3.1. Legal basis for regulating AI application in Europe: risk-based approach

The EU is actively seeking its own way of developing AI (Straus, 2021). The European Commission is committed to implementing a set of policies aimed at stimulating the industry while respecting fundamental human rights. This body put forward three proposals to transform Europe into a space where innovations actively develop, ensure the safe use of technology, and support a favorable business environment. These proposals include: a) a legal framework for the regulation of AI; b) an approach to establishing accountability for AI-related incidents (planned for release in the last quarter of 2021 – first quarter of 2022); c) updating industry-specific legislation (e.g. safety regulations, the General Product Safety Directive – Q2 2021).

In the course of the study, we paid special attention to the legal concept embraced in a Regulation of the European Parliament and of the Council laying down harmonized rules on AI (AI Act) and amending certain union legislative acts issued in April 2021 (EUR-Lex, 2021). The key idea of this document is to apply a risk-based approach in regulation. It aims at classifying AI-driven systems into different categories, depending on their potential threat to health, safety, and fundamental human rights. Thus, AI-powered systems can be recognized as means that create: a) an unacceptable risk; b) a high risk; c) a low risk.

AI-powered systems with an unacceptable risk are completely prohibited because their use violates the universal values recognized by the EU. In particular, the use of various systems that affect the person's consciousness against their will is not allowed, namely, various manipulative techniques that address various groups of the population: children, seniors, persons with mental disorders, etc.

If the previous category does not cause any controversy, the next one is rather ambiguous. High-risk AI systems fall under a whole set of regulatory requirements and are allowed on the European market if they fully comply with them. The criteria for assigning a specific AI-driven system are their functional characteristics and goals. Within this group, they are divided into:

a. AI systems to be used as a safety component of products subject to prior third-party conformity assessment.

b. AI systems, whose exploitation can affect the state of human rights and whose list is indicated in a separate annex (for example, use in law enforcement, the administration of justice, or the field of democracy).

Such requirements represent a system of continuous risk management: monitoring, identifying, and assessing them with due regard to the available technical capabilities; thorough testing of these systems during development and before commission based on the purpose of a specific AI-powered system. Particular attention should be paid to data processing, i.e., information should be up-to-date, representative, correct and complete.

Finally, the third category includes low-risk AI systems that do not need any regulation. However, attention is drawn to the fact that responsible actors might comply with codes of ethics when creating, developing, and using such systems.

The use of AI systems raises legal issues at the level of national legislation in European countries. These issues concern, inter alia, human rights, confidentiality, fairness, algorithmic transparency, and accountability (Wachter *et al.*, 2021). Many states emphasize the need to assess the existing legal framework and enact new legislation to provide favorable legal conditions for the successful implementation and operation of AI-driven systems.

For example, Belgium adopted a Royal Decree on tests with automated vehicles in March 2018 (Belgisch Staatsblad, 2018). In 2017, a similar act was adopted by the Danish parliament that amended the road traffic law to allow tests of unmanned vehicles. In addition, Denmark has amended the Danish Financial Statements Act which stipulates that the largest companies adhering to data ethics policies must provide compliance information, while

companies that do not have a data ethics policy are required to explain why they do not have such a policy.

In 2020, Finland adopted a new law aimed at developing the smooth operation and safety of transport, creating the prerequisites for digitalization and automation of road traffic (Belgisch Staatsblad, 2020). The Netherlands also adopted and implemented regulations on self-driving vehicles, automated decision-making by law enforcement agencies, and the prevention of discrimination in employment when using automated systems (Government of the Netherlands, 2019). Finally, Lithuania passed a law on autonomous driving which allows driving cars without humans on board (Chancellery of the Seimas of the Republic of Lithuania, 2021).

Thus, countries start to develop industry-specific regulations for certain areas of AI that are currently not covered or insufficiently covered by the existing EU legislation. In this context, it is worth mentioning unmanned vehicle regulations. Many states have enacted regulations allowing the testing of unmanned vehicles and related technologies on public roads. Other significant areas of regulation are data (namely, in health care) and automated decision making. For example, Norway works on proposals to amend its health register to distinguish between the use of data for patient care and the rules for obtaining consent from individuals. Slovakia also prepares a new Act on Data to better define data protection rules, disclosure principles, data access, and open data rules.

In addition, many European states consider creating special legal regimes for experimentation with AI, for example, by developing regulatory sandboxes. While several EU member states have announced it in their national AI strategies, the overall development of regulatory sandboxes for AI is still insufficient.

Based on the foregoing, Europe is about to adopt a unified end-to-end regulatory act that will affect different spheres of public relations. This regulation should utilize a risk-based approach focused on a person. In this connection, the main criterion is the potential threat posed by AI to individual rights. The advantage of such a regulatory system is that it is not limited to one area and, in general, aims at protecting the rights and freedoms of citizens regardless of the field of AI application. However, this also conditions a disadvantage associated with the fact that an excessive number of regulatory requirements for actors involved in the development, distribution, and use of AI-powered systems can significantly slow down the growth of the industry, which will have a negative impact (at least in economic terms) on the quality of life.

3.2. Use of AI systems in the US: specific regulation of public relations

In the US of America, there has been an increase in the number of AI regulations submitted to the federal legislature over the past few years. Thus, the 115th Congress (2017-2018) received 50 bills mentioning AI, and the 116th Congress (2019-2020) considered 175 (The United States Congress, 2021). This indicates a significant interest on the part of legislators to regulate this area. However, only seven of such bills were adopted and entered into force. In addition, these acts are not connected and are concerned with such different issues as funding, the development of scientific centers, defense, and international relations.

Currently, the sphere of AI is regulated by bylaws issued by executive authorities. The first document was the Executive Order of the President of the US of February 11, 2019, No. 13859 "Maintaining American Leadership in AI" (hereinafter referred to as the Order) (The White House, 2019). It defines five key principles to develop state policy in the field of developing AI. The Order formulates such principles of state policies as promoting the introduction of technological breakthroughs; the development of technical standards; the training of workers with skills in the development and application of AI technologies; protecting the American values, including civil liberties and privacy, increasing public confidence in AI technologies; developing an international environment to support US developments and open up new markets with due regard to the need to conceal technological advantages and critical AI-powered technologies from strategic competitors and rival countries.

Based on this Order, the Administration of the President of the US approved the Memorandum for the heads of executive departments and agencies in November 2020 (The White House, 2020). This document sets out the principles that should be followed by the executive authorities to develop normative and non-normative approaches to the implementation and operation of AI systems, both at general and sectoral levels. These principles are laid down in the following manner:

- Creating public confidence in AI systems.
- Public participation in decision-making.
- The use of the most objective and scientifically grounded information in the activities of executive authorities.
- The application of a risk-based approach in regulating the use of AI systems.
- Considering the benefits and costs of using AI systems.

- The use of result-oriented flexible approaches to regulation.
- Analyzing possible discriminatory consequences from the use of AI systems.
- Ensuring the transparency and accountability of decisions made by AI systems.
- Securing the functioning of AI systems at all stages.
- Implementing interdepartmental coordination between various government bodies.

Under this document, if the existing regulatory framework is sufficient for the use of a specific technological solution in the field of AI, or the development of new legislation is incommensurable with the predicted economic benefits of this solution, then its use should be stopped or replaced with non-regulatory approaches, including guidelines or programs for the implementation of public policies in certain sectors of the economy, pilot programs and experiments, and voluntary consensus standards and frameworks.

Following the entry into force of the President's Order, the House of Representatives adopted a Resolution "Supporting the development of guidelines for ethical development of AI" (The United States Congress, 2019). It contains tasks correlating with the provisions of the Order, whose implementation should be ensured: the interaction of industry, government, academic community, and civil society; the transparency and "expandability" of AI systems; empowering women and underrepresented or marginalized groups of society; information confidentiality and personal data protection; career opportunities for different social classes; the accountability and oversight of all automatic decision-making systems; life-long education in engineering, social sciences, and humanities; equitable access to technological services; the interdisciplinary research of safe and useful AI; the security and control of AI systems.

At the state level, the most regulated aspect of AI is the use of unmanned vehicles. More than half of the states have enacted legislation that, to one degree or another, allows the use of such vehicles on public roads (National Conference of State Legislatures, 2020).

Let us consider the existing laws in different states. Illinois passed the AI Video Interview Act (Illinoys General Assembly, 2020), requiring employers to notify interviewees that AI might be used to assess them. Before the interview, they should get the consent of candidates, provide information on how AI works and what criteria are used to assess their professional suitability. Alabama has two laws that recognize the impact of AI technologies on the growing number of jobs in the state (Waggoner, 2019a) and set up a state commission on AI to review and advise on all

aspects of developing and using AI in various spheres (Waggoner, 2019b). California passed a law that requires each government agency to provide information to the public prior to approving a subsidy for the development of warehouse distribution centers, regularly report on the reduction or replacement of jobs due to automation to the Governor's Office of Business and Economic Development (Medina, 2019). By a 2019 law, the state of New York established an interim state commission to study the regulation of AI, robotics, and automation until December 2020 (Savino, 2019).

In 2021, more than 10 states introduced draft laws or parliamentary resolutions related to the regulation of AI. All of them are under consideration and are related to such issues as the development of AI (Alabama); the use of methods that minimize the risk of adverse consequences caused by the automated decision-making systems made by government bodies (California); tax benefits (Hawaii); establishing requirements for ensuring the fairness and transparency of automated decision-making systems used by government agencies, as well as the confidentiality of consumer data (Massachusetts); the verification of computer system algorithms and logical formulas used by the unemployment agency (Michigan); the prohibition of discrimination against certain categories of the population by automated decision-making systems (New Jersey); the establishment of a commission to oversee the impact of technology on the labor market and the state's economy as a whole (New York); the establishment of an advisory group to eliminate bias in government software (Vermont); the development of guidelines for public procurement and the use of automated decision-making systems to protect consumers and increase market transparency (Washington).

In the US, there are no cross-cutting laws that form a unified legal approach to regulating the area in question both at the federal and state levels. This is a conscious legal policy of the state based on the principle of "ad hoc" regulation that presupposes the regulation of social relations as they naturally develop. Thus, the regulatory legal acts adopted in the US are fragmented and not uniform from the semantic perspective. Legal regulation is not complex and affects certain spheres (for example, transport and medicine) or narrow issues (for instance, hiring discrimination) related to the development and functioning of AI-powered systems (Pasquale, 2019). This approach is beneficial from an economic viewpoint since it does not imply the creation of a massive mechanism of legal regulation. At the same time, there is a risk that a significant number of incidents in the field of human interaction with AI-driven systems will occur before a sufficient regulatory framework is formed in the US.

3.3. Concept of AI legal regulation in China

In July 2017, the State Council of the People's Republic of China announced a strategy for the development of AI called the "New Generation AI Development Plan". This strategy sets the national goal to become a global leader in AI by 2030 and to take a leading position in the development of AI-related regulatory frameworks, ethics, and standards. The concept represents only a general model and goals of future legal regulation. Accordingly, it should be considered in connection with other regulatory legal acts.

The concept determines three main stages in the development of China until 2030:

- By 2020, the AI industry's competitiveness will have entered the first echelon internationally. The AI development environment will be further optimized, opening new applications in important domains, and initially establishing AI ethical norms, policies, and regulations in some areas.
- By 2025, China will achieve breakthroughs in basic theories for AI so that some technologies and applications achieve a world-leading level. China will have seen the initial establishment of AI laws and regulations, ethical norms, and policy systems.
- By 2030, China's AI theories, technologies, and applications should achieve world-leading levels, making China the world's primary AI innovation center. China will have formed a more mature new-generation AI theory and technology system for meeting the challenges of technical development (China Science & Technology Newsletter, 2017).

According to a group of researchers from Oxford and the Alan Turing Institute, this concept was developed by the state but the actual implementation of these innovations and transformations will be carried out by the private sector and local authorities (Roberts *et al.,* 2021).

The Chinese regulation is also characterized by quick adaptation to new technological solutions in a wide market. In contrast to the above-mentioned countries, China actively uses unmanned vehicles on public roads in marked areas (Ziyan and Shiguo, 2021), is the first state to create automated Internet courts and a unified social rating system.

China approved the "Smart Car Innovation and Development Strategy" that defines several goals until 2025 (National Development and Reform Commission of China, 2020):

- The large-scale production of self-driving cars working in certain conditions or third-level automation cars.
- The deployment of level four autonomous cars for specific environments (robotic taxis, unmanned trucks, and commercial vehicles).
- Comprehensive standards for self-driving vehicles covering technological innovation, infrastructure, legislation, supervision, and network security.

China has achieved considerable results in the field of data protection. In 2016, the Cybersecurity Law of the People's Republic of China was adopted which established regulatory requirements like those of the EU and US. Since China is a state with an authoritarian political system, data confidentiality is more connected with the decisions of state authorities rather than with the creation of a unified legal framework supported by independent court decisions.

Conclusion

Based on the results of the study, authors can conclude, an excessive number of regulatory requirements for actors involved in the development, distribution, and use of AI systems can significantly slow down the growth of the industry, which will negatively (at least in economic terms) affect the quality of life. A review of the US legislation has revealed that at the federal and state levels there are no cross-cutting laws that form a unified legal approach to regulating the area in question. Legal regulation is not complex and affects certain spheres (for example, transport and medicine) or narrow issues (for instance, hiring discrimination) related to the development and functioning of AI-powered systems.

On the one hand, this approach is beneficial from an economic viewpoint since it does not imply the creation of a massive mechanism of legal regulation. On the other hand, there is a risk of human rights violations. In China, ambitious development concepts have been adopted in the field of AI systems and robotics. This country introduces innovations into public life much more actively than the EU and US due to centralized regulation. In the process of adopting regulatory legal acts, the state reserves a lot of opportunities for unlimited participation in the activities of private companies and uses innovations to create a unified system of control over all spheres of public life.

This issue is common to other spheres of social and economic activity; therefore, the freedom of private and public organizations is severely limited by the state's interests. By adopting regulatory legal acts, the state

provides a lot of opportunities for unlimited participation in the activities of private companies and actively introduces innovations to create a unified system of control over all spheres of public life.

On the one hand, China has adopted ambitious development concepts in the field of AI systems and robotics. This country introduces innovations into public life much more actively than the EU and US due to centralized regulation. On the other hand, their actual implementation is entrusted to private companies and local authorities, and the state retains ample opportunities for control in all spheres.

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Approaches to the definition of constitutional traditions

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Abstract

The author of the article analyzes the definition of constitutional traditions under the influence of various legal cultures; It also considers the various existing approaches to the definition of constitutional traditions and, at the same time, proposes its own approach to understanding these traditions in their particular context. The results show that constitutional traditions are formed over several generations, therefore, they always reflect the fundamental specificities of a sociocultural system. The author also highlights the factors that influence the perception of constitutional traditions in different legal-constitutional cultures. For the rest, the article studies the most widely disseminated approaches to understand constitutional norms that do not always fully coincide with the canons of constitutional and legal culture. Methods of scientific and general philosophical cognition are used to explore the constitutional tradition from different perspectives of analysis. It is concluded that constitutional traditions, as a whole, can be characterized as elements of the constitutional legacy that preserve the fundamental values of democracy, the constitutional order, the mechanism of state power and the constitution-based political system, as well as the constitutional forms of government enshrined in law.

Keywords: constitutional tradition; constitutional and legal culture; constitutional law; cultural factor; legal norm.

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Aproximaciones a la definición de tradiciones constitucionales

Resumen

La autora del artículo analiza la definición de tradiciones constitucionales bajo la influencia de diversas culturas jurídicas; ademas se consideran los diversos enfoques existentes para la definición de tradiciones constitucionales y, al mismo tiempo, propone su propio enfoque para comprender estas tradiciones en su particular contexto. En los resultados se demuestra que las tradiciones constitucionales se forman a lo largo de varias generaciones, por lo tanto, siempre reflejan las especificidades fundamentales de un sistema sociocultural. La autora también destaca los factores que influyen en la percepción de las tradiciones constitucionales en diferentes culturas jurídico-constitucionales. Por lo demas, el artículo estudia los enfoques de mayor divulgación para entender las normas constitucionales que no siempre coinciden plenamente con los cánones de la cultura constitucional y jurídica. Se utilizan métodos de cognición científica y filosóficos generales para explorar la tradición constitucional desde diferentes perspectivas de análisis. Se concluye que las tradiciones constitucionales, en su conjunto, pueden caracterizarse como elementos del legado constitucional que preservan los valores fundamentales de la democracia, el orden constitucional, el mecanismo del poder estatal y el sistema político basado en la Constitución, asi como las formas constitucionales de gobierno consagradas en la ley.

Palabras clave: tradición constitucional; cultura constitucional y jurídica; derecho constitucional; factor cultural; norma jurídica.

Introduction

In the first decades of the 21st century, a very ambiguous and flexible legal-political environment developed in Russian society due to both ongoing internal transformations and global transition processes. Dynamic social and legal processes become a stimulus for new research on Russian constitutionalism. After comprehending the existence of the Russian Constitution of 1993, we face important scientific questions regarding such a unique source of Russian constitutionalism as the constitutional tradition on the eve of its 30th anniversary. There is a growing interest in the balance between traditions and innovations in law, the real influence of law and constitutionalism on modern social life and the possible future of Russia.

There is a need to rethink some significant issues of state transformations at the turn of the 20th and 21st centuries that have been already described. In connection with the appearance of new states on the political map of the world instead of the former Soviet Union (USSR) at the end of the 20th century (mainly, the largest country – the Russian Federation), it is necessary to provide a clear definition of the legal basis and political structure of these states. In the legal sphere, the main challenge was associated with finding out what model the new legal system of Russia should be built on: either it should use the foundations of the Soviet legal system and become its legal successor, or it should form its own legal system according to other models, for example, the most developed states (the so-called Western countries).

1. Methods

Due to the widespread criticism of the legal foundations of the previous state (the Soviet Union) in the relevant scientific and journalistic literature and the demonstration of advantages of the Western way of life, some experts believed that the best way could be to build the new Russian legal system over the Western model, with a predominance of liberal and democratic values enshrined in an organized legal system, primarily in the country's constitution.

The other experts claimed that each nation has its own centuries-old traditions and typical forms of organizing social and state life, i.e. forming an appropriate legal system. In addition, there are convergent views, according to which the Russian Federation is the legal successor of the Soviet Union and should form its legal system, on the one hand, based on the previous Soviet experience and the evolution of the Russian statehood, on the other hand, it should adopt the Western experience of building liberal-democratic legal systems.

The latter approach was chosen. The legal system of the Russian Federation partially consolidated the experience of the Russian Empire, the USSR and the Western countries. The formation and development of the Russian state system underwent certain changes, during which it moved from the socialist system to the liberal and democratic one. Large transformations in public life, the adoption of a presidential system, an actively pursued course towards developing a market economy, overcoming the dictate of the previous single political ideology, forming a civil society and the rule of law entailed many changes in all the spheres of life, including economic, political, legal, socio-cultural, educational, etc.

Both in theory and practice, different approaches, views and ways of social transformations collide. The legal sphere is no exception:

> In 1992-1993, the sovereign statehood of Russia was forming. There were three types of power: legislative (the Congress of People's Deputies and the Supreme Council elected the former body), executive (the President and the Government appointed by the former) and judicial (the Constitutional Court). The process of choosing a specific form of statehood (either a presidential or parliamentary-presidential republic) was not easy (Kashchenko, 2009: 24).

Due to drastic social transformations, the Constitution of the Russian Federation was adopted in 1993 in a rather hasty manner. It constituted the milestone of political and legal reforms in renewed Russia (The Constitution of the Russian Federation, 1993).

2. Results

Currently, there are several approaches to the definition of constitutional traditions in the science of constitutional law.

Some supporters believe that constitutional traditions were formed and exist in those countries where the Protestant religion predominates. One of such advocates is K.V. Aranovskii (2003; 2004).

At the beginning of the 21st century, one of the most famous scientific studies on the constitutional tradition is K.V. Aranovskii's monograph dedicated to the spread of the constitutional tradition in Russia (Aranovskii, 2003; 2004). This research is practically the first to highlight and present scientific analysis in this area. The author analyzed state and legal traditions, which is necessary for understanding and characterizing the constitutional tradition. As a result, he defined the state-legal tradition as the historical and legal formation expressed in stable skills, conditioned by religious or secular beliefs, worldviews, feelings, the quality of information consumed and perceived, one's own understanding of law, power and statehood (Aranovskii, 2004: 26).

In general, K.V. Aranovskii regarded the constitutional tradition as a sustainable and holistic legal formation capable of renewing (Aranovskii, 2004: 26). The constitutional tradition is influenced by Protestantism, individualism, pragmatic rationality, traditional beliefs and images, equality and inalienable rights, which conditions certain behavioral patterns. It is characterized by the perception of legal conventions, the selection and control of feelings. Standardization and legal awareness are typical of the constitutional tradition (Aranovskii, 2004: 38).

According to the author, the constitutional tradition has a holistic and sustainable legal nature, when state and legal traditions share the features of a legal formation. However, he did not consider the historical impact on

constitutional traditions in the process of their formation since this feature is common only to state and legal traditions (Aranovskii, 2004: 38).

Answering the key question of his research about whether the Russian society can become constitutional, and if so, how this is achievable, K.V. Aranovskii believed that there were some similarities between the Russian environment and the environment with the dominance of constitutional traditions (for example, respect for law) but there were much more differences between them. This applies to both the ethical values that have developed over centuries and the practice of implementing power relations (Aranovskii, 2004: 38). In Russia, the ideals of conciliarism, collectivism and the common good were always fundamental. In the Russian environment, the triumph of truth and justice is the supreme value in contrast to the West, where more attention is paid to the correct and proper execution of laws (Aranovskii, 2004: 38).

It is worth mentioning that this study was conducted 10 years after the formation of the Russian Federation, therefore its objective and main tasks were fully justified. Since the country had a 70-year experience in building a communist society (diametrically opposite to the constitutional one), the results of this 10-year development show how the idea of constitutionalism was accepted in society and whether society wanted to further move in this direction. K.V. Aranovskii neglected the historical impact of Russian law on constitutional traditions in the process of their formation and development. He expressed the idea that such continuity can be inherent only in state and legal traditions. In his opinion, the constitutional tradition can be renewed in contrast to the Russian state and legal traditions.

Knyazev (2015) claimed that the constitutional tradition aimed at achieving a balance between individual freedom and public power. The essence of constitutional traditions is nothing more than a set of inalienable features of constitutional ideology that are understood as: the rule of law, recognition and respect for human rights and civil freedoms, democracy and popular representation, private property and entrepreneurship, the separation of powers and decentralization, equality before law and court, political and ideological diversity, multi-party system and freedom of association, independent judiciary and adversary proceedings (Knyazev, 2015). In general, the author discussed the constitutional tradition but did not define this phenomenon.

Another approach presented by Lafitskii (2013) provides that the constitutional tradition is formed under the influence of national legal systems, including Slavic, Romano-Germanic, Scandinavian and Latin American. In this regard, the scholar highlighted, for example, the Slavic constitutional tradition.

While describing typical features of the constitutional tradition, Lafitskii (2011) proposed to combine states with certain features into a specific group, for example, the features of the Slavic constitutional tradition. The scholar analyzed the constitutions of states with pronounced features of the Slavic constitutional tradition and referred to the basic laws as a source of such traditions. At the same time, he used the revealed patterns (including comparative jurisprudence) as a source of the Slavic (Russian) constitutional tradition. The classification of the Slavic constitutional features corresponds to the general structure of basic laws common to a number of the Slavic states. According to the scholar, Russia belongs to the states with pronounced features of the Slavic constitutional tradition (Lafitskii, 2011).

Lafitskii (2011) believed that the preambles of the Slavic constitutions (new basic laws of the Slavic world) contain the main features of constitutional traditions. All these preambles proceed from the need to restore the lost connection of times, preserve the heritage of ancestors, create a democratic, legal and social state (Lafitskii, 2011).

Special dictionaries (Avakyan, 2001; 2015; Arutyunyan and Baglai, 2006; Baglai and Tumanov, 1998; Tolkovyi slovar konstitutsionnykh terminov i ponyatii, 2004; Azriliyan, 2007; Kutafin, 2003; Sukharev, 1987) contain legal vocabulary and summarize legal features, as well as constitutional terms, but do not provide any definition of the constitutional tradition. This only testifies to the fact that the term "constitutional tradition" is new and insufficiently studied within the framework of the science of constitutional law in Russia. Such a gap allows us to analyze this issue, discover interesting facts and answer the questions posed, as well as provide an original viewpoint.

3. Discussion

At the beginning of the 21st century, the scientific community repeatedly emphasized the need to amend the current Constitution of the Russian Federation, transform or even adopt a completely new Basic Law. Before 2020, several amendments were adopted in 2008 and 2014.

However, is such a regular "intervention" in the country's Basic Law really necessary, or is it universal enough?

According to Zorkin, the deep legal meaning embedded in the constitutional text allows to adapt it to the changing social and legal realities within the doctrine of the "living Constitution" adopted in the world practice. The reliance on this doctrine helps identify its actual meaning in the context of modern social and legal conditions without distorting the legal meaning laid down in the Constitution of the Russian Federation (Zorkin, 2018).

Salikov noted that "evaluating the 25-year functioning of the Russian Constitution, it should be said that it has not exhausted its potential. Being a constitution, it contains considerable reserves that must be put into practice" (Salikov, 2019: 12).

At the same time, "the constitutional reform can hardly change the legal life in Russia and can only restore the current government to ease the existing social tension" (Ignatenko, 2020: 90).

The universality of the Constitution of the Russian Federation might mean that this law is based on significant national foundations of the Russian statehood and, as a consequence, traditional foundations of the Russian mindset. The fundamental principle of this Basic Law can be preserved through the spread and consolidation of constitutional traditions. Only this form of law can serve for the benefit of its citizens, accept and adequately respond to external factors for more than a decade while allowing positive transformations to be adopted.

However, not only political events affect the development and formation of Russian society. As 2020 has shown, the current situation connected with the COVID-19 spread and anti-coronavirus measures makes the global population reconsider the basic needs and rules of life to preserve their own health, the health of their loved ones and sometimes even their lives. Such prevention and control measures led to the closure of borders and restricted the movement of people across borders. We began to feel the need to study and perceive ourselves in this world. The question arises about basic human values, cultural origins and traditions.

In the course of the COVID-19 pandemic, the Russian citizens had another significant event, namely the all-Russian national voting to adopt amendments to the Constitution of the Russian Federation on July 1, 2020. These amendments should determine the further development of Russian society.

These factors also influence the scientific sphere that directs its vector towards the study of unique sources conditioning the development of Russian constitutionalism in the form of constitutional traditions. In Russian science, discussions about the concept of "tradition" and its role in the formation of modern Russia became more frequent, which indicates a growing interest in the new knowledge based on the specific Russian thinking and experience. A tradition is considered the most important factor in the stability and efficiency of any state (Chuvilkin, 2013).

In recent years, there has been an oversaturation of foreign ideas and views on the formation and development of a democratic society in Russia. We need to remember that Russia has a centuries-old history of state development and was able to preserve its sovereignty during this period. The unique experience of Russian statehood should be studied and used.

If the nature of legal traditions, their specifics and content are studied in detail in the relevant scientific literature (Marchenko, 2008; Medushevskii, 2014; Sulipov, 2013; Chuvilkin, 2013; Shatkovskaya, 2014), there is not enough research on the constitutional tradition. The existing references to the latter are mostly of an applied nature. Fortunately, the resulting discourse attracts the attention of scholars and contributes to the creation of new scientific works on this topic (but their number is still small). There are many applied publications about the constitutional tradition in connection with the classification and functioning of the main branches of law having their own specifics of legal traditions, for example, such phenomena as constitutional aspects of civil-legal traditions, state-legal traditions, etc. The "constitutional tradition" term is used in scientific literature as a comparative tool without considering this concept as an independent category.

Of course, the constitutional tradition originates from the legal tradition. However, the constitutional tradition should be regarded as an independent scientific category that has a definite role in the science of constitutional law. This is conditioned by the current relevance of the special constitutional formation and development of Russia, as well as the preservation of its unique traditions. Thus, it is relevant to study the constitutional tradition as an independent scientific category related to the legal field of knowledge and practice, i.e. constitutionalism, whose basis is the Constitution of a particular country as the main organizing center of modern constitutional and legal systems.

Currently, there are scientific studies concerned with the constitutional tradition in general, including the Russian constitutional tradition. In these studies, the meaning of the constitutional tradition does not reflect its special role in Russian society. Most scientific works in which authors mention the constitutional tradition are associated with their desire to show mental and ideological differences in its distribution. The significance of research on constitutional traditions as a scientific category of constitutional law, the theory of state and law is that the constitutional tradition ultimately receives a conceptual description, including a general definition, the identification of characteristics and distinctive features. Thus, it can become an independent category of jurisprudence and philosophy, consolidate its status in the development of Russian constitutionalism.

All this requires comprehensive analysis, the development of a scientific definition, a study of the essence, uniqueness and specific features of the national constitutional tradition.

Conclusion

Realizing that this article covers several scientific areas, we propose to use general scientific methods, as well as interdisciplinary methods of cognition (legal, cultural and philosophical).

We actively used comparative methods to view an object from diametrically opposite perspectives. We also referred to the historical method since the research object is characterized by a long development time.

The dialectical method helped us study different forms of the above-mentioned object from the standpoint of its unity and inner contradictions, as well as the struggle of opposites.

The stable constitutional construction of the state and the Constitution of the Russian Federation stipulates a thorough study of the constitutional tradition in Russia and its impact on the development of Russian constitutionalism in general.

There were certain preconditions (almost 30 years) for the development of constitutionalism in modern Russia. Indeed, this is a very short period if compared to the Western countries, where such history goes back centuries. At the same time, unique features that distinguish it from the other states are manifested in Russian constitutionalism. The traditions that existed in the Russian Empire and the Soviet Union are reflected in modern Russia, fit into its Constitution and state system.

While analyzing the above-mentioned scientific studies and guided by our own reasoning, constitutional traditions as a whole can be characterized as elements of the constitutional legacy that preserve the fundamental values of democracy, the constitutional order and the Constitution, the mechanism of state power and the political system based on the Constitution, the constitutional forms of government enshrined in the main the law of the state.

The constitutional tradition expresses an ingrained view and attitude prevailing in society towards constitutional values as the heritage of generations formed under the influence of various factors (including national mindset, religion, cultural and personal values, the values of state and law) and continues to be relevant in modern days. It has a long-term character, is preserved and passed on to generations.

We cannot dwell only on the general approach to the definition of constitutional traditions. This category should be considered not only in general but also from different perspectives. Assuming that the Western constitutional tradition means a tradition based on the constitution, the Russian concept has a slightly different meaning.

For example, the main democratic terms can be disclosed with due regard to the Russian mindset and experience, i.e. it is relevant to highlight the Russian constitutional tradition that greatly differs from the one that prevailed in Europe. Although Russia borrowed the ideas of democracy from the Western countries, they need to be interpreted exclusively in the "Russian" way.

We believe that it is necessary to distinguish between the Russian and foreign constitutional traditions. In this case, the foreign heritage formed within the framework of some constitutional tradition will influence the constitutionalism of another state. Despite long-term adoption, the constitutional tradition tends to succumb to influence and, as a result, change. Another question is whether the receiving party or the party influenced by a foreign constitutional tradition is ready for such an impact.

It is worth mentioning that the Russian constitutional tradition is based on its experience, transmitted and consolidated in constitutional norms, has unique legal and cultural features for citizens and compatriots living in this territory.

Based on the above-mentioned reasoning, we can conclude that there are two opposed approaches to the constitutional tradition. This opposition can be expressed in the form of a "traditional" constitutional tradition and an "anti-traditional" constitutional tradition (or a constitutional anti-tradition).

The "traditional" constitutional tradition should be understood as the constitutional tradition characterized by long-term constitutional culture and values. On the contrary, the "anti-traditional" constitutional tradition acts as an alien constitutional tradition, not inherent and opposite to the first one. This tradition influences the development of the "traditional" one from the outside and can be perceived in relation to the "traditional" constitutional tradition either negatively or positively. The constitutional anti-tradition is outside influence.

Different views about the constitutional tradition indicate that this category is being studied by scholars and arouses their interest due to the lack of sufficient elaboration. The discussion of this issue allows us to consider the constitutional tradition from different perspectives and reveal new non-specific features. A separate study should be concerned with unique features of the national constitutional tradition.

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Comparative analysis of the prevention of the laundering of the proceeds of crime in different countries

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Abstract

The objective of the research was to analyze the fight against the laundering of money obtained by criminal means as one of the priorities of the socio-economic development of all countries with advanced economies. This is particularly important in the period of the fight against COVID-19, when countries faced global economic decline, growing budget deficits, and the need to find mechanisms to stimulate economic growth under conditions of a large number of restrictions imposed by coronavirus infection. The authors used the methods of analysis of scientific documents, laws and legal norms. As a result, a comparative analysis of the main elements of anti-money laundering systems in different countries was carried out and, in addition, the characteristics of the construction of AML/CFT systems at the international level are indicated. It is concluded that, as a rule, government authorities start from the understanding that banks know their customers and understand their operations better than the financial intelligence agency and the supervisory authority. Therefore, they also believe that it is necessary to send the financial intelligence agency already «leaked» information about suspicious transactions, which will probably be used by law enforcement authorities.

Keyword: anti-money laundering law; control threshold; criminal proceeds; financial intelligence; global financial sector.

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Análisis comparativo de la prevención del blanqueo de dinero en diferentes países

Resumen

El objetivo de la investigación fue analizar la lucha contra el lavado de dinero obtenido por medios delictivos como una de las prioridades del desarrollo socioeconómico de todos los países con economías avanzadas. Esto es particularmente importante en el período de la lucha contra el COVID-19, cuando los países enfrentaron un declive económico global, déficits presupuestarios crecientes y la necesidad de encontrar mecanismos para estimular el crecimiento económico en condiciones de un gran número de restricciones impuestas por la infección por coronavirus. Los autores utilizaron los métodos de análisis de documentos científicos, leyes y normas jurídicas. Como resultados, se efectuó un análisis comparativo de los principales elementos de los sistemas contra el lavado de dinero en diferentes países y, ademas, se indican las características de la construcción de sistemas ALD/CFT a nivel internacional. Se concluye que, por regla general, las autoridades gubernamentales parten del entendimiento de que los bancos conocen a sus clientes y entienden sus operaciones mejor que la agencia de inteligencia financiera y la autoridad supervisora. Por lo tanto, también creen que es necesario enviar a la agencia de inteligencia financiera información ya «filtrada» sobre transacciones sospechosas, que probablemente sera utilizada por las autoridades policiales.

Palabra clave: lucha contra el blanqueo de capitales; umbral de control; producto delictivo; inteligencia financiera; sector financiero global.

Introduction

In the last quarter of the twentieth century, under the influence of the rapid development of information, financial and transport technologies, the world became global. The global economy is dominated by multinational corporations, which equaled the economic power and political influence of nation-states. Rapidly developing technological advances have offered new forms of communication that have opened up additional opportunities for organized crime. As a result, conditions have developed that are extremely favorable for the growth of the criminal economy, which has also become global in scale, structure of relations and spheres of activity.

The analysis of the structure of the modern economic system allows us to clearly reveal the economic content of the concept of" money laundering". The essence of money laundering is that the money acquired

illegally is appeared as receives in the eyes of the state and society a form that completely or largely hides their origin. In practice, after laundering "dirty" money becomes indistinguishable from legally obtained money. The legalization of criminal proceeds is a complex process involving many different operations performed by a variety of methods that are constantly being improved. Despite the huge variety of mechanisms and schemes of legalization, they are based on almost one technology.

1. Research and methodology

In the Russian Federation, the subject of legalization (laundering) of proceeds from crime is money or other property, the illegal acquisition of which is a sign of a specific crime (for example, theft, taking a bribe), as well as money or other property received as a material reward for a crime (for example, for murder for hire) or as payment for the sale of items restricted in civil circulation.

There are differences in national AML/CFT systems and methods due to different initial states of economies and the role of shadow components in them. Given these differences, the approaches to the fight against ML/FT various foreign countries can be classified into the following groups (Alifanova, Evlakhova, 2015; Anti-money laundering and counter-terrorist financing measures, 2019; Voznyakovskaya, 2012):

1) The Countries to which legal norms in the fight against ML/TF was formed largely under the influence of international law (member countries of the European Union and the member States of the Council of Europe).

2) Countries whose legal norms in the field of combating ML/FT were formed for the most part within the national legal framework without significant influence of international law (the United States, Canada and other countries of the American continent). Such a feature of the US legislation is due to the fact that in this country the legislation on combating organized crime and, accordingly, on laundering the proceeds from criminal activities was created in the early 70s of the last century, when the international legal framework in the field of countering these types of criminal activities was not yet at the level of the United Nations, or at the regional, in particular European, level (Money Laundering and Tax Evasion, 2017; National assessment of the risks of legalization (laundering) of criminal proceeds, 2018; Money laundering, 2018).

3) Asian countries have strong and competent law enforcement agencies, but the transparency of their financial systems is insufficient to judge the extent of money laundering.

4) Countries whose legal norms in the field of combating ML/FT have not yet been formed, but are only in their infancy (these are a number of States in Africa and Latin America). In most countries in these regions, no measures have been taken against ML/FT. For example, in Africa, there are relatively few countries that have ratified the Vienna Convention and adopted special measures against money laundering, which may simply mean that there is no money laundering problem on the same scale as in other regions (Solongo, 2001; Anti-money laundering and counter-terrorist financing measures, 2019; Schneider, 2010).

It should be noted that the legal norms of control in the banking and financial sphere are of particular importance at the present time, since it is a platform where the most of this type of crime occurs. Increased attention in the legislation of various countries is aimed to the control of ML/FT at the stage of their placement in financial institutions. Research shows that this phase of the legalization of criminal proceeds is the most vulnerable to state control. The effectiveness of any ML/FT control model depends on the extent to which it ensures financial transparency of the activities of financial and non-financial sector institutions for authorized government bodies.

2. Results and Discussion

Table 1 provides a detailed analysis of the main elements of the national AML/CFT systems of the countries that received a high FAFT rating as part of the preparation of the mutual assessment report. Here are some distinctive features of the organization of foreign AML/CFT systems.

Table 1. Analysis of the main elements of national AML/CFT systems*

Country	Year of adoption of the law	Special legislation	Financial Intelligence Unit (FIU)	Control thresholds	Responsible for informing the FIU	Special software systems for analytical work	Criminal liability for money laundering
Russia	2001	Federal Law of 07.08.2001 No. 115-FZ; Art. 174 and 174.1 of the Criminal Code of the Russian Federation; -special regulatory legal acts of the Bank of Russia	Federal Service for Financial Monitoring (Rosfinmonitoring)	600,000 rubles, about 8,000 USD	Responsible employees of financial intermediaries	Information Resources of Rosfinmonitoring and the Bank of Russia	Low enough (from a monetary fine to imprisonment up to 7 years)
The USA	1970	- Bank Secrecy Act (BSA), 1970; - Money Laundering Control Act, 1986; - Comprehensive Money Laundering Act, 1986; - Anti-Drug Abuse Act,1988; - Crime Central Act. Par. 2532, 1990; - Housing and Community Development Act, 1992 - Presidential Decision Directive (PDD) № 42, 1995; - Foreign Account Tax Compliance Act (FATCA), 2013	FinCEN	10 000 USD	Responsible employees of financial intermediaries	CBQS Currency and Banking Inquiry System	Very high (imprisonment up to life imprisonment)
Great Britain	1986	- Money Laundering Control Law , 1896; - Terrorism Act 2000; - Anti-terrorism, Crime and Security Act, 2001; - Proceeds of Crime Act, 2002; - Serious Organised Crime and Police Act, 2005; - Money Laundering Regulations, 2007 - Criminal Finances Act 2017	National Criminal Intelligence Service (NCIS)	10 000 EUR	Money laundering reporting officer, MLRO	Information and analytical center NCIS	High (imprisonment for up to 14 years, including inspectors (MLRO), not who reported a dubious operation)
Italy	1991	- Law No. 646 "On the fight against the mafia", 1982; - Law No. 55 " On the activity of financial and credit institutions of the country", 1990;	UIC	10 000 EUR	Responsible employees of financial intermediaries	GIANOS system	High (imprisonment for up to 12 years or more, as well as large monetary fine)

* compiled by the authors

*USA***.** FinCEN currently has the world's largest data bank by volume of information and the most advanced data management system, which includes software based on artificial intelligence methodology. AI/MPP (MPP - Massive Parallel Processing) technology allows monitoring of the entire American electronic banking process in real time. The AI/MRP artificial intelligence system automatically scans more than 70 major American databases, combining fragmentary information about the object under study. It is able to detect illogical / atypical financial transactions for further study by specialists (Alstadster et al., 2017; Leandro, Schneider, 2018). FinCEN works with the U.S. Treasury Department to develop AML/CFT programs, and specific verification programs for individual foreign accounts.

According to foreign experts, FinCEN is the largest of all existing databases, capable of processing and analyzing huge amounts of information in the short term. It should be noted that since January 1, 2013, the US law "On Taxation of Foreign Accounts" (Foreign Account Tax Compliance Act, FATCA) has entered into force, according to which financial organizations of all countries must conclude a special agreement with the US Internal Revenue Service (IRS) on monitoring the availability of accounts of American taxpayers and from January 1, 2014, transmit information about them to the IRS. At the same time, if the financial institution does not have such an agreement, 30% will be forcibly withheld from the amounts of money transfers originating in the United States; from the proceeds received from the sale of American assets (for example, shares or bonds), regardless of whether a profit or loss was obtained as a result of the transaction; from all transfers to organizations that have not entered into this agreement. Moreover, the IRS also undertakes to provide relevant information to the tax authorities of these countries.

The compliance of financial institutions with the requirements of US AML/CFT legislation is regulated by Regulation 31 CFR 103.121[5] and section 326 of the US PATRIOT[6] Act, according to which each financial institution is required to perform a customer identification program (hereinafter referred to as PIK) in accordance with the size and nature of its activities, including certain minimum requirements. It should also provide for reasonable and practical risk-based procedures to verify the identity

5 The Client Identification Programs Statement was developed jointly by the US Treasury Department, FinCEN, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Savings Oversight Office and the National Credit Union Administration, and has been applied in practice since 10/01/2003.

6 USA PATRIOT Act, a law passed by the US Congress and signed by President George W. Bush on 10/26/2001 (after the 9/11/2001 terrorist attack). Thanks to this law, the powers of the special services in the field of anti-terrorist activities were significantly expanded. The law also extends to the financial sector, expanding the powers of the competent authorities to carry out regulatory activities and supervise financial transactions, especially those that are carried out by foreign private and legal entities.

of each client. These procedures should enable the financial institution to reasonably believe that it knows the true identity of each client.

Based on the analysis of documents and established banking practices of AML/CFT adopted in the United States, we conclude that the success of any financial investigation requires the principle of "follow money" ("follow money"), together with a thorough review of many documents on transactions, including using information from a bank account, research via the Internet, reports on credit transactions, taxpayer taxes, financial reports (balance sheet, income statement, etc.), suspicious transactions or activities (SAR), as well as analytical reports FBAR, CTR. We believe that in order to develop AML/CFT mechanisms in Russia, attention should be paid to these facts (Haruk, 2010; National assessment of the risks of legalization (laundering) of criminal proceeds, 2018).

The experience of European countries is also interesting for Russian practice. In European countries, the system of monitoring and informing about banking operations and transactions is built differently, depending on the specifics of a particular country.

The United Kingdom became the first European country to ratify the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime in 1990.

In 1992, the National Criminal Intelligence Service (NCIS) is established in the UK, which is responsible for collecting, storing, estimating and analyzing information about serious crimes, including those related to ML/FT. This activity allows to create data banks on almost all aspects of crime. The Service receives information about suspicious transactions from authorized state bodies (this duty is assigned to AML/CFT inspectors (money laundering reporting officer)). An employee of a financial institution is obliged to inform the competent authorities about the transaction performed by the client, if this employee suspects that the client's transaction is aimed at ML/FT, or the amount for it exceeds the established threshold value.

The Office of Strategic and Special Intelligence NCIS is located in London and is a think tank that studies various aspects of high-risk crimes. The Department collects, researches and analyzes information on economic crimes. Reports on the work in the form of dossiers, memoranda and qualified opinions are submitted by this office to the British law enforcement and other authorities. The reports contain information on trends and trends in the development of crime. This NCIS unit is also engaged in tactical intelligence against criminals and criminal groups.

The financial Investigation Departments of the police forces of the UK counties, based on the materials of the NCIS, carry out operational checks of persons suspected of possessing or disposing of criminal proceeds. If

it is necessary to obtain information about the accounts of the client of a financial and credit institution, the local police officers are required to apply to the court for a production order, on the basis of which the financial and credit institution has the right to provide the police with information about the movement of the client's funds. For example, if individuals have information or assumptions that the money is illegal income from the commission of a crime, and they do not report this to the relevant competent authorities, they can be prosecuted with imprisonment for up to five years.

Thus, we can conclude that the system is under/The UK CFT has a three-level structure, where the central place is occupied by the state body, which is responsible for financial monitoring of data received from the primary AML/CFT subsystem (inspectors of financial institutions on allegations of money laundering), as well as conducting their preliminary analysis with further transmission of information to law enforcement agencies and courts in the UK. At the same time, the main feature of such an AML/CFT system is the presence in the FIU body of a database of suspicious transactions with the possibility of access to it by police agencies, which undoubtedly increases the effectiveness of interaction between supervisory and law enforcement agencies.

In order to improve the effectiveness of the interaction of Russian state bodies in the field of AML/CFT, attention should be paid to these facts.

In *Italy*, the fight against financial crimes was launched earlier than in many other European countries.

In 1982, the Law No. 646 "On combating the Mafia" was adopted, which allowed the verification of bank accounts of persons suspected of involvement in criminal groups, and the investigation of real estate transactions made by them. The Italian law enforcement authorities have the right to study the lifestyle, financial situation, sources of income of citizens suspected of belonging to criminal syndicates, and members of their families (wives, children), as well as individuals and legal entities whose property and funds the suspects may directly or indirectly dispose of.

In addition, in Italy, persons involved in the legalization (laundering) of income and property obtained by criminal means can be imprisoned for a period of 7 to 12 years and subject to a large monetary fine. For officials who use their official position, the period of punishment for the same criminal acts may be extended. Law No. 197, adopted in 1991, introduced a control system that includes:

- Prohibition of circulation of bearer securities.
- Mandatory indication of the beneficiary when performing a large-amount transaction;
- Limit the maximum amount of funds in bearer accounts to 20 million liras (from 01.03.2003-10 000 EUR).

- The role of the financial intelligence agency, which receives information about suspicious transactions, is performed by a special body of the Bank of Italy-UIC (Ufficio Italiano dei Cambi), which has the following functions::
- Statistical accounting and operational analysis of the Italian balance of payments.
- Management of foreign exchange reserves.
- Preventing and combating the legalization (laundering) of criminal proceeds, through financial analysis and intelligence.

The UIC operates in close cooperation with the Financial Guard units. The Financial Guard is a security agency that carries out special investigations of suspicious financial transactions detected by the UIC. The main purpose of the guard units is to identify the sources of income and determine the composition of the property of the accused and suspects. When the facts of violation of the law are established in the course of a special investigation, the information is brought to the Chief Prosecutor, who decides to initiate a criminal investigation.

Thus, it should be noted that within the framework of the Italian AML/CFT system, the Financial Guard carries out operational and investigative activities, while the functions of the Italian FIU-UIC consist exclusively in information and analytical support. In addition, the competence of the Financial Guard includes smuggling and organized crime in the financial sphere.

Summarizing the above, it is necessary to note that, despite many international recommendations, there are no common approaches to the organization of work in the field of AML/CFT in banking institutions in different countries. Each country has its own characteristics of the organization of this work. However, there are also general principles of this work. Almost all developed foreign countries have adopted AML/CFT laws, established financial intelligence units, developed special programs, and set thresholds for monitoring. Special tools have been developed that banks use to manage ML/FT risks: indicators for identifying suspicious transactions, setting transaction thresholds, having special reports and databases, developing special programs and software, as well as a corporate strategy for AML/CFT purposes (Johnson, 2019; Summary rating for assessing the effectiveness..., 2020; Voznyakovskaya, 2012).

The Russian AML/CFT system differs from most foreign AML/CFT systems, primarily by the increased level of detail of the rules and procedures described in laws and regulations, and the relatively strict regulation of the activities of credit institutions under AML/FT.

In addition, Russian credit institutions have a fairly passive role in the AML/CFT system. In essence, this role is limited to the registration, storage and transmission of information about transactions subject to mandatory control. In turn, the burden of conducting financial investigations in Russia largely lies not on the banks themselves, but on the Bank of Russia and Rosfinmonitoring, which acts as a "filter" for processing and analyzing information, standing between the banking system and law enforcement agencies.

At the same time, in most foreign AML/CFT systems, the financial intelligence unit receives information that has already been substantially processed ("filtered") in the banks themselves, which are engaged in financial investigations. The information presented below allows us to assess how carefully foreign banks "dose" information sent to financial intelligence units in comparison with Russian banks (Table 2). The data in table 2 should be understood taking into account the scale of banking systems.

Table 2. Number of reports submitted by banks from different countries to financial intelligence agencies*

Country	Number of messages per year, million									
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Russia	6	7,5	8,9	9,5	10,2	12,7	22,2	30	33,8	29,3
The USA	2,1	1,7	1,9	2,7	1,6	1,97	1,8	1,9	2	2,2
Great Britain	0,24	0,32	0,41	0,279	0,316	0,354	0,381	0,418	0,441	0,478
Italy	0,021	0,0373	0,049	0,067	0,064	0,072	0,082	0,101	0,094	0,098

* compiled by the authors

Conclusion

In the foreign countries the government authorities proceed from the understanding that banks know their customers and understand their operations better than the financial intelligence agency and the supervisory authority. Therefore, they believe that it is necessary to send to the financial intelligence agency already "filtered" information about suspicious transactions, which is highly likely to be used by law enforcement and supervisory authorities.

There are strong arguments that national AML/CFT systems based on the principle of granting banks broad rights and powers in the field of AML/CFT, based on the priority of the substantive side of work over the formal side, are the most advanced and effective (if we use the traditional understanding of efficiency as the ratio of results and the cost of resources to achieve them).

The conducted research and comparison of national AML/CFT systems makes it clear that the focus should be shifted to the internal control of banks.

First, such AML/CFT systems increase the effectiveness of the work of state bodies in identifying illegal, socially dangerous activities as a result of monitoring banking operations and, accordingly, suppressing these activities.

Secondly, advanced AML/CFT systems help to reduce the costs and expenses across the economy for carrying out work in the field of AML / CFT by achieving the fullest possible alignment and harmony of the interests of the banking sector with the interests of the state. The emphasis is placed on the fact that banks independently and in their own interests build an internal control system aimed at managing the risks associated with customer service.

Thus, the experience of the United States and European countries can be used in solving the issue of developing mechanisms to counteract the legalization of illegal income in the banking system in Russia. At the same time, it should be understood that an insufficiently thought-out and hasty copying of even the most advanced foreign experience, without a preliminary assessment of the readiness of national authorities and business circles to accept these changes, can lead not to an increase in the effectiveness of the AML/CFT system, but, on the contrary, to negative results. In addition, it should be noted that an important step towards the effective functioning of any AML/CFT system is to understand the economic content of the process of legalization (laundering) of illegal income, its manifestations and consequences.

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International legal standards for the conduct of criminal prosecution and its implementation in the legislation of the Russian Federation and the Federal Republic of Germany

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Abstract

Through the method of reviewing scientific documentation, the objective of the study is to determine international legal standards for the implementation of criminal prosecution and its implementation in legislation in Russia and Germany. International standards in the field of criminal procedure are analyzed, from which the category «international standards of criminal prosecution» has been developed. To form a unified concept for the implementation of criminal prosecution and create an effective mechanism to protect the rights of the accused, the need for further investigation of international standards is argued. Within the framework of this investigation, an attempt was made to draw attention to the issues of the regulation of the implementation of criminal prosecution in international documents, as well as the national legislation of the Russian Federation and the Federal Republic of Germany. It is concluded that international standards for the application of criminal prosecution play an important role in consolidating the rule of law and improving criminal procedure legislation, as they contribute to the formation of a unified concept of criminal prosecution and set the permissible limits for restricting the rights of the accused.

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Normas jurídicas internacionales para la realización de procesos penales y su aplicación en la legislación de la Federación de Rusia y la República Federal de Alemania

Resumen

Mediante el método de revisión de documentación científica, el objetivo del estudio es determinar los estándares legales internacionales para la implementación del enjuiciamiento penal y su implementación en la legislación en Rusia y Alemania. Se analizan las normas internacionales en el campo del proceso penal, a partir de las cuales se ha desarrollado la categoría "normas internacionales de enjuiciamiento penal". Con el fin de formar un concepto unificado para la implementación del enjuiciamiento penal y crear un mecanismo efectivo para proteger los derechos del acusado, se argumenta la necesidad de una mayor investigación de las normas internacionales. En el marco de esta investigación, se intentó llamar la atención sobre las cuestiones de la regulación de la implementación del enjuiciamiento penal en documentos internacionales, así como la legislación nacional de la Federación de Rusia y la República Federal de Alemania. Se concluye que las normas internacionales para la aplicación de la persecución penal desempeñan un papel importante en la consolidación del estado de derecho y la mejora de la legislación de procedimiento penal, ya que contribuyen a la formación de un concepto unificado de enjuiciamiento penal y también establecen los límites permisibles para restringir los derechos del acusado.

Palabras clave: persecución penal; estándares internacionales; garantía de los derechos del sospechoso; imputado; concepto de persecución penal.

Introduction

The norms of international law regulate the procedure for criminal prosecution in conjunction with the issues of ensuring the rights of the suspect, the accused, determining their legal status, protecting the interests of these entities, regulating the powers of the prosecutor, terminating criminal prosecution, etc.

The initial principles of building a criminal justice system formed by the world community contain only the fundamental principles of the activities of law enforcement agencies, paying attention to ensuring the rights and freedoms of a person involved in criminal procedural relations in connection with the implementation of criminal prosecution against him.

At the same time, not only the category of "criminal prosecution" is absent in international law, but it also does not disclose what should be understood by "international standard".

This situation is due to the activities of the bodies carrying out criminal prosecution, depending on the individual provisions of each legal system, which makes it possible to take into account the sovereignty of states, recognizing the right to self-determination. Such loyalty is explained by the diversity of national legal systems, their dependence on the policy pursued in the state, the economic situation, social situation, national and cultural characteristics. The importance of international standards, which, in turn, are specially formulated in this way in order to provide states with an independent choice of tools for the implementation of the starting principles of criminal prosecution, does not diminish.

Thus, Russian and German legislators retain the right to clarify and detail the criminal procedural legislation, taking into account the international standards of criminal prosecution when building the national system of law.

1. Methods

The study is based on the analysis of international regulations, German, and Russian criminal procedure legislation.

The research methodology consisted of: systemic, formal-logical methods, dialectical method of cognition, method of legal and technical analysis. On the basis of the data obtained, provisions were formulated that made it possible to highlight the definition of "international standards for the implementation of criminal prosecution", to develop the foundations of a single concept for the implementation of criminal prosecution, to reveal the essence of criminal prosecution.

2. Results

Now let us look at the research results:

(1) When defining international standards of criminal prosecution, one should take into account the provisions of the UN General Assembly Resolution "Establishing International Standards in the Field of Human

Rights" No. 41/120 of December 4, 1986, which, in fact, states the existence of a system of international standards in the field of human rights established by it (meaning, the UN), other UN bodies and specialized agencies, and calls for widespread ratification of existing treaties. When developing such documents, it is necessary to take into account: their compliance with existing international legal norms; clear formulation for further possible use; realistic mechanism for the implementation and implementation of the principles.

In the legal literature, there is no unified approach to understanding the category of "international standards", which negatively affects their implementation in national legislation.

Some authors refer to international standards all international norms in the field of individual rights and freedoms (Borodin, Lyakhov, 1983; Kondrat, 2013, p. 10).

According to S.V. Chernichenko, international standards include the obligations of the state or requirements that members of the international community make to each other (Chernichenko, 1989, pp. 117-120).

A.I. Zybailo and V.L. Fedorova state that international human rights standards include a set of rules recognized by states that reflect the normative minimum in the field of human rights, are formed as a result of the interpretation of international human rights law by competent international bodies and appear as models that states must follow in legislative, executive and judicial domestic activities with permissible deviations in the form of their exceeding or concretization (Zybailo, Fedorova, 2018, pp. 26-30).

We believe it possible to agree with the position of I.N. Kondrat in terms of the application of the category "normative rule" to international standards and its extension to the national systems of the member states, for example, the Council of Europe, the European Union, the CIS, etc., that is, in a certain region. The concept of "standards" in relation to human rights should be considered not as a model, standard or model, but as a general normative rule, the purpose of which is to achieve adequate sensitivity to human rights and their equal applicability not only at the international, but also at each of the regional levels (Khaliulin, 1997).

According to A.G. Khaliulin, it is advisable to single out "groups of states, whose legislation has some similarities to each other: 1) the USA; 2) Great Britain and the countries of the British Commonwealth; 3) the countries of Western Europe; 4) the countries of Eastern Europe - former socialist states; 5) the countries of the CIS and the Baltic states – the former republics of the USSR" (Ivanov *et al.,* 2020).

International standards in the field of criminal prosecution, in our opinion, also include the positions of the ECHR, formulated by it in

decisions and judgments, which by their legal nature, although not norms or normative rules, contain and explain the basic fundamental principles of the European Convention on the Protection human rights and fundamental freedoms, adopted in 1950, its interpretation and application.

(2) Despite the fact that international courts do not create norms of law, they, interpreting the provisions of international treaties, play an important role in the formation of international standards for the implementation of criminal prosecution.

The jurisdiction of the ECHR extends to both the Federal Republic of Germany and the Russian Federation, which are members of the Council of Europe, which have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. So, in accordance with Art. 32 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the jurisdiction of the court is all questions concerning the interpretation and application of the provisions of this document and the protocols thereto (Mullerson, 1991).

This international act indicates the obligations of the member states of the Council of Europe: "The High Contracting Parties undertake to comply with the final judgments of the Court in cases to which they are parties" (Art. 46).

According to Art. 27 of the Vienna Convention on the Law of Treaties, which enshrines one of the fundamental principles of international law pacta sunt servanda (treaties must be enforced), "a party cannot invoke the provisions of its domestic law as an excuse for not fulfilling a treaty".

The stated provisions and the obligation to comply with them are not unambiguous.

In the German legal literature, the place of the ECHR decisions in the system of court decisions made by national courts is controversial (Hartwig, 2005).

Some scholars prioritize the ECHR decisions and argue that, at a minimum, they should be viewed as "super-governmental", "constitutional" or even "super-constitutional". Justifying their position, German researchers proceed from the provisions of the Convention on Human Rights (Art. 46), according to which the state against which the decision is made, implementing international agreements, and acting within the framework of international legal relations, are obliged to execute the decisions of the Court in any case, in which they act as parties.

The Federal Constitutional Court of the Federal Republic of Germany pointed to the obligation to review the decisions of the ECHR and developed the duties of state bodies arising from individual judgments (decision of the ECHR "Görgülü v. Germany", No. 74969/01, 26 February 2004):

1. The Constitutional Court of the Federal Republic of Germany first of all pointed out that the European Convention on Human Rights (as well as the protocols thereto), in national legislation, have only the status of a federal law.
2. The Basic Law seeks to integrate Germany into the legal community of peace-loving and free states but does not renounce the sovereignty ultimately embodied in the German constitution. The law of treaties is applied at the domestic level only when it is implemented in the domestic legal system in an appropriate form and in accordance with substantive constitutional law.
3. Administrative bodies and courts cannot abandon legal regulation in the existing and current system of law and compliance with the law, referring to the decision of the European Court of Human Rights.
4. The absence of challenging of the court's decision, as well as its execution, which violates the priority national law, may affect fundamental rights, while if the ECHR found a violation of the Convention with the participation of the Federal Republic of Germany, then in each case, the peculiarities of the "internal sphere" should be taken into account, that is the competent authorities or courts should clearly deal with it and, if necessary, justify why they still do not follow the international legal establishment.

Russian scholars point out that the Federal Constitutional Court of the Federal Republic of Germany does not establish the imperativeness of the decisions of the European Court, thereby emphasizing the need to carefully study the judgment of the ECHR when introducing it into national legislation (Kulikov, 2020). At the same time, it should be borne in mind that the opinions expressed regarding the ECHR judgments do not prevent the use of the positions formulated in the relevant court decisions as a guideline for law enforcement and legislative activities on the observance and implementation of human rights.

In accordance with Federal Law No. 101-FZ (July 15, 1995) "On International Treaties of the Russian Federation", there is a provision according to which "international treaties of the Russian Federation are subject to fair implementation in accordance with the terms of the international treaties themselves, the norms of international law, the Constitution of the Russian Federation, this Federal Law, other acts of the legislation of the Russian Federation" (Art. 31).

According to Part 4 of Art. 15: "If an international treaty of the Russian Federation establishes rules other than those provided by law, then the rules of the international treaty are applied".

At the same time, attention should be paid to the changes introduced by the Federal Law (December 8, 2020) No. 419-FZ "On Amendments to Article 1 of the Code of Criminal Procedure of the Russian Federation", according to which the application of the rules of international treaties is not allowed in their interpretation that contradicts Constitution of the Russian Federation.

In connection with the foregoing, the position of E.A. Torkunova (2002) is of interest, according to which, even though the ECHR does not replace national legislation, the participating States will have to eliminate gaps in domestic legislation, the inconsistency of its individual provisions with European human rights norms, as well as violations of these norms in law enforcement practice. The presented author's statement, in general, despite the recent legislative changes in this area, characterizes the importance of the positions formulated in the decisions of the ECHR and indicates the expediency of their use as international standards, including in the implementation of criminal prosecution.

Thus, on the basis of the foregoing, we come to the conclusion that the *international standards for the implementation of criminal prosecution* include the normative rules enshrined in international declarations, conventions, protocols, pacts, treaties both at the international and regional levels, as well as the position of the ECHR, formulated by him in decisions and judgments, which are not norms by their legal nature, but in fact contain and explain the starting fundamental principles of the European Convention on Human Rights.

(3) Let us turn to the international documents that enshrine the principles of criminal prosecution, the mechanism for its implementation, and apply to the jurisdiction of the Federal Republic of Germany and the Russian Federation.

International criminal prosecution standards can be divided into *two groups*.

The first group includes the following *international standards established by the Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948*, which are to consolidate: (a) the rights to life, liberty and security of person "(Art. 3), to equal protection of the law (Art. 7), equality of all people before the law (Art. 7); free movement and choice of residence (Part 1 of Art. 13); to own property (Part 1 of Art. 17); (b) the prohibition of torture or cruel, inhuman or degrading treatment (Art. 5), conviction for a crime that, at the time of its commission, did not constitute a crime under national or international law (Part 2 of Art. 11); arbitrary deprivation of a person of his property (Part 2 of Art. 17).

International standards of criminal prosecution are also enshrined in the *International Covenant on Civil and Political Rights* adopted on December

16, 1966, by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly, which specified some international legal standards related to the implementation of criminal prosecution and set forth in The Universal Declaration of Human Rights and established new ones.

Thus, this document contains such international legal standards that are subject to mandatory observance, such as: (a) prohibition of torture, cruel, inhuman or degrading treatment (Art. 7); (b) the right to life, liberty and security of person (Art. 9); (c) inviolability of the home, privacy of correspondence, protection of honor and reputation (Part 1 of Art. 17); (d) the right to equal protection of the law from arbitrary or unlawful interference with private and family life (Part 2 of Art. 17); (e) the right to free movement and choice of residence (Parts 1 and 2 of Art. 12).

The second group of international legal standards for the implementation of criminal prosecution includes the normative rules that secure the rights of a person when a criminal charge is brought against him, as well as those related to the conditions of a possible restriction of inalienable rights and freedoms in the event of a criminal charge of a person and his arrest. Such standards are also enshrined in the *Universal Declaration of Human Rights* and contain the following postulates in the form of:

(a) the rights of every person on the basis of full equality in order to determine his rights and obligations, as well as to establish the validity of the criminal charge brought against him, to a criminal case in compliance with requirements of justice by an independent and impartial court (Art. 10); (b) prohibition of arbitrary arrest and detention: "no one may be subjected to arbitrary arrest, detention or exile" (Art. 9); (c) the duty of the state to ensure judicial control and, if there are grounds, rehabilitation of a person who has been illegally detained or imprisoned: "everyone has the right to effective restoration of his rights by the competent national courts in case of violation of his fundamental rights conferred on him by the constitution or law" (Art. 8); "Every person accused of committing a crime has the right to be presumed innocent until his guilt is established legally through a public trial, in which he is provided with all the opportunities for defense" (Parts 1 of Art. 11).

The International Covenant on Civil and Political Rights has significantly expanded the international legal standards enshrined in the Universal Declaration of Human Rights, complementing the second group of standards we have identified in this study with normative provisions concerning: (a) the mandatory establishment of the grounds, conditions of arrest and detention (Part 1 of Art. 9); (b) the obligation to notify the detainee of the grounds for detention and inform him of the charges brought against him (Part 2 of Art. 9); (c) providing a person with additional guarantees when a criminal charge is brought against him (Part 3 of Art. 14): to be notified of the nature and basis of the criminal charge against

him in his native language (if necessary, use the free help of an interpreter); to receive sufficient time and opportunity to prepare a defense, including free of charge with the help of a designated defense lawyer; to freely testify or confess guilt without coercion; (d) judicial control during the arrest or detention of a person in order to determine the legality of the restriction of the rights of the person arrested or detained, respectively (Parts 3 and 4 of Art. 9); (e) the grounds for the release from custody of persons in the event of the presentation (at any stage of the criminal proceedings) of guarantees to appear in court (Part 3 of Art. 9); (f) the peculiarities of criminal prosecution against juvenile accused, aimed more at the re-education of minors (Para. b of Part 2 of Art. 10, Part 4 of Art. 14).

In its essence and content, the category "international standard" is synonymous with the United Nations Minimum Rule Standards, which, like other international documents (declarations, covenants, conventions, treaties), contain the guiding principles of international law.

Such documents include, for example: (1) Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 in Geneva. It should be noted that this document was the first to use the term "standard rules"; (2) Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, December 14, 1990); (3) Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) (December 17, 2015); and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by UN General Assembly resolution 40/33 of November 29, 1985.

For example, the Beijing Rules grant states the right to independently determine the age of criminal responsibility for minors who may be prosecuted, while the lower limit of such age "should not be set too low" (Para. 4.1).

For a juvenile who is being prosecuted, additional procedures are established in the form of immediate notification of the parent or guardian of the juvenile about the detention, the use of detention as a last resort, as well as replacement of detention with other milder special measures.

International legal standards in the field of criminal prosecution are formed as a result of the work of regional international organizations (Council of Europe, CIS, etc.). A significant role in this area is played by the activities of the Council of Europe, in the documents of which the requirement addressed to the member states is established to comply with the basic standards and principles in the field of human rights and freedoms developed by the organization and formulated in the conventions, protocols to it, agreements, and in case of violation - to use means for their restoration and compensation for harm caused by such violation (Khaliulin, 1997, p. 47).

Such standards in the field of criminal prosecution include the normative rules formulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols; The Convention on Compensation for Victims of Violent Crimes (1983); Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and its Protocols, etc.

The provisions of the above-mentioned international documents are naturally reflected in the national legislation of the Federal Republic of Germany and in the Russian Federation – states cannot ignore the provisions contained in the documents, since they are either parties to an international treaty, or directly participated in their development and adoption.

(4) Let us consider some examples of the implementation of international standards in the criminal procedure legislation of the Federal Republic of Germany and the Russian Federation.

A significant step towards building a democratic state governed by the rule of law was the entry of the Russian Federation into the Council of Europe in 1996, the subsequent adoption of the Federal Law No. 54-FZ (March 30, 1998) "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols to it" and the state's undertaking to bring Russian legislation and the practice of its application in line with European standards.

The most important direction of the judicial reform in accordance with international documents was the protection and unswerving observance of fundamental human rights and freedoms in criminal proceedings, as well as the strengthening or establishment of judicial control over the legality of restricting such rights in the implementation of criminal prosecution against a person.

The consequence of the ongoing judicial reform and the actions of the legislator was the development and adoption on December 18, 2001 of the Code of Criminal Procedure of the Russian Federation, which reflected the main provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which everyone has the right to liberty and security of person, no one can be deprived of liberty except lawful being taken into custody by a competent court, whereby each person in custody is promptly brought before a judge or other official with judicial power, is entitled to trial within a reasonable time or to release pending trial (Art. 5).

The protracted alignment of the Russian criminal procedural legislation with international standards and the Constitution of the Russian Federation served as the basis for the receipt of relevant complaints first to the Constitutional Court of the Russian Federation, and then to the ECHR.

According to the Decree of the Constitutional Court of the Russian Federation of March 14, 2002, No. 6-P, the provisions of Articles 90, 96, 122 and 216 of the RSFSR Code of Criminal Procedure were recognized as inconsistent with the Constitution of the Russian Federation, allowing the detention of a person suspected of committing a crime for a period of more than 48 hours and as a preventive measure of taking into custody without a court decision. Federal Law No. 59-FZ of May 29, 2002 "On Amendments and Additions to the Federal Law "On the Enactment of the Code of Criminal Procedure of the Russian Federation", the judicial procedure for choosing a preventive measure in the form of detention was put into effect.

Aware of the existing negative law enforcement practice, the legislator continued to improve the procedure for choosing a preventive measure in the form of detention and already in 2003 made amendments to Part 1 of Art. 108 of the Code of Criminal Procedure of the Russian Federation, according to which a judge's decision on the choice of a preventive measure in the form of detention must indicate specific, factual circumstances on the basis of which the judge made such a decision, in addition, the choice of a preventive measure is permissible only if there is a reasonable suspicion (Popenkov *et al.*, 2021).

The criminal procedural legislation of the Federal Republic of Germany in the field of choosing a preventive measure in the form of detention contains, in fact, provisions similar to the Code of Criminal Procedure of the Russian Federation with some exceptions/additions. So, according to §112 (Para. 1, sentence 1) of the CPC of the Federal Republic of Germany, one of the prerequisites for detention is the presence of substantial suspicion of a criminal act, which means the belief that the accused has committed a criminal act or participated in its commission, i.e., all signs of punishment and conditions of criminal prosecution are present.

It is of interest to present to each citizen (both the person against whom a crime has been committed and any other person, for example, an eyewitness) in exceptional cases (Para. 1 of §127 of the Code of Criminal Procedure of the Federal Republic of Germany) the right to take a criminal procedural measure in the form of detention in relation to a person caught on the crime scene of the suspect in the commission of a criminal act, provided that such detention cannot be carried out by the authorized bodies. The purpose of such detention is to ensure criminal prosecution.

After the arrest, the law enforcement agencies have an additional obligation to inform about the reasons for the arrest, including the criminal act.

In the official translation of the European Convention on Human Rights into Russian, the category "immediately" is used. In the English version it is understood as "promptly", which translates as "quickly", and in the

German we find the following translation: "in kürzester Zeit", i.e., as soon as possible.

Information about the criminal act, that is, on the charges brought forward, in practice during the arrest is the initial one and can subsequently be supplemented if necessary. A short-term delay in the provision of information is possible until the point in time when the information can be processed properly (Löwe, Rosenberg, 2016). The criminal procedure legislation of the Federal Republic of Germany does not indicate how long the detained person is notified of the suspicion.

In the judgments of the ECHR, the judges additionally explain how to understand the corresponding time of notification formulated in the European Convention. Thus, information may not be provided at the time of arrest, but it must be announced within a few hours after it, as indicated in several judgments of the ECHR.

Thus, in the case "Zuyev v Russia" (Application no. 16262/05, §84) The ECHR concluded that the period between Z.'s arrest and the notification of the charges against him, equal to 14 hours, was excessive. As the court indicated, during this period Z. remained in a state of confusion and uncertainty as to the reasons for the deprivation of liberty (a similar reasoning was used in the judgment of the European Court of April 21, 2011, in the case Nechiporuk and Yonkalo v Ukraine), application no. 42310/04, §210).

Thus, using the example of the analysis carried out, we see that the international the standards of criminal prosecution concerning the prohibition of arbitrary arrest, as well as the need to establish its grounds and conditions, the duty of law enforcement agencies to inform the detainee of these grounds and the criminal charge are reflected in the national criminal procedure legislation. In the Russian Federation, there is a specific time limit for such notification, which is three hours. In the Code of Criminal Procedure of the Federal Republic of Germany, such a term is not specified in such detail that, in our opinion, it is subject to change to more detailed regulation of the powers of authority of persons conducting criminal prosecution and authorized to detain on suspicion of committing a crime, preventing violations of human rights, as well as providing additional guarantees to the detainee.

(5) When touching upon the powers of the authorities to comply with international standards reflected in national legislation, it is necessary to refer to the international documents defining the activities of the prosecutor in carrying out criminal prosecution, namely to Recommendation No. R (2000) 19 of the Committee of Ministers of the Council of Europe to member states "On the role of the prosecutor's office in the criminal justice system", adopted by the Committee of Ministers of the Council of Europe

on October 6, 2000 at the 724th meeting of the Ministers' representatives.

According to this document, regardless of the forms of criminal prosecution, systems of law enforcement agencies and justice, prosecutors in all criminal justice systems should have the authority to resolve issues on the initiation, continuation of criminal prosecution; maintaining the prosecution in court; appeal against a court decision.

Nowadays, in accordance with international standards in the Federal Republic of Germany, the prosecutor's office has fully retained the function of criminal prosecution, which is enshrined in national legislation as the prosecutor's duty to bring public charges, organize the prosecution of all criminal acts (§152), refuse public prosecution (§153a-153f), limit the prosecution (§154a) or temporarily stop the proceedings (§154f).

In the Russian Federation, the prosecutor has never been the only subject of criminal prosecution, initially its main function was to supervise government officials, and after the adoption of the Federal Law "On Amendments and Additions to the Code of Criminal Procedure of the Russian Federation" dated June 5, 2007 No. 87-FZ, the powers of the Russian prosecutor to carry out criminal prosecution have undergone significant changes and, in fact, at the stage of pre-trial proceedings were reduced to the conclusion of a pre-trial agreement (Clause 5.2, Part 2 of Art. 37 of the Code of Criminal Procedure of the Russian Federation) and the approval of accusatory documents drawn up by the preliminary investigation authorities (Clause 14, Part 2 of Art. 37 of the Code of Criminal Procedure of the Russian Federation).

Based on the afore-mentioned information, it can be stated that international standards in the field of criminal prosecution are presented in international law not only in the form of norms-principles, but also in the form of securing the legal personality of the prosecutor in the implementation of criminal prosecution. At the same time, in terms of granting the prosecutor sufficient powers to carry out criminal prosecution at the pre-trial stages of criminal proceedings, the Russian legal system does not fully meet international standards. This provision is subject to legislative regulation.

Consideration of the issue of criminal prosecution would be incomplete without resolving the question of the adversarial nature of the parties: "If the law stipulates the adversarial principle in its regulations, it demonstrates the level of democracy in the State, humanization and justice of criminal law, protection of rights, freedom, and legal interests of persons, and equal and effective defense by law and courts.

The adversarial system as a general independent principle is specified in Art. 123, Para. 3 of the Constitution of the Russian Federation. Moreover, this principle is enshrined in art. 6 of the European Convention on Human

Rights since the adversarial principle ensures legal justice. Notably, the analysis of the European Court of Human Rights practices revealed that the adversarial approach lies in providing the defense and prosecution with equal opportunities to study the evidence of the other party and state their opinion on it. Consequently, it ensures the equality of the parties in criminal proceedings (Pushkarev *et al.,* 2020).

This ensures the solution of the fundamental tasks of protecting the rights, freedoms, and interests of the individual in the context of the fairness of criminal proceedings but will also eliminate the inconsistency of its individual norms governing criminal prosecution and protection from it (Pushkarev *et al*., 2021).

Conclusion

Based on the analysis of generally recognized principles, norms of international law, the law enforcement practice of the ECHR, the positions of scientists who have studied the legal nature and essence of international standards, the following should be noted.

A common understanding of the essence of criminal prosecution, the definition of its beginning, timing, and procedural order, as well as the system of bodies implementing it, in international norms, decisions of the ECHR has yet to be formulated.

International standards for the implementation of criminal prosecution are specially formulated in such a way as to provide states to independently choose the means and mechanism for implementing the initial principles of criminal prosecution, which is explained by the variety of national legal systems, their dependence on the policy pursued in the state, the economic situation, social situation, national and cultural characteristics.

Thus, the legislator of both the Russian Federation and the Federal Republic of Germany retains the right to clarify and detail the guidelines, international standards for the implementation of criminal prosecution, taking them into account when building the current system of state law.

International standards for the implementation of criminal prosecution play an important role in building the rule of law and improving national criminal procedure legislation, since they contribute to the formation of a unified concept of criminal prosecution and establish the permissible limits for limiting the rights of the suspect, the accused.

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La fragilidad del poder mediante el enfoque analítico del personalismo político y el desdén del sentido común (Caso: México)

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Resumen

La aparición del COVID-19 trajo consigo afectaciones en todos los niveles del modo de vida de la humanidad. Este ensayo quiere abarcar y analizar decisiones políticas durante esta coyuntura, especialmente, acerca de figuras políticas de gobernantes como lo es el *caso paradójico* del actual Presidente de México Andrés Manuel López Obrador AMLO, quien fungió y se condujo con un tratamiento *ad hoc y sui generis* ante la situación de pandemia; éste con sus designios asumió pensares, conductas y acciones de carácter personalista, que solo vinieron a atentar contra las vidas y los derechos fundamentales de los mexicanos (como el derecho a la vida, autonomía, entre otros). De forma que con su postura y posteriores actos públicos demostró una impericia insondable, un manejo transgresor acerca del respeto por los derechos fundamentales de sus conciudadanos y de sí mismo. El resultado obtenido del artículo refleja y evidencia la carencia de interés tanto por el derecho por la vida, la dignidad, el bienestar social como la solidaridad humana. Como conclusión preliminar se observó analíticamente el *fenoménico* denominado: personalismo político, el cual se ha constituido en una característica de las gobernanzas particularizadas, de carisma y liderazgos que se han instalado en determinadas naciones democráticas.

Palabras claves: COVID-19; AMLO; personalismo político; sentido común; políticas públicas.

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The fragility of power through the analytical approach of political personalism and the disdain for common sense (Case: Mexico)

Abstract

The appearance of COVID-19 brought with it effects on all levels of the way of life of humanity. This essay wants to cover and analyze political decisions during this juncture, especially, about political figures of rulers as is the *paradoxical case* of the current President of Mexico Andrés Manuel López Obrador AMLO, who served and conducted himself with an *ad hoc and sui generis* treatment. in the face of the pandemic situation, this with his designs assumed thoughts, behaviors, and actions of a personalistic nature, which only came to attack the lives and fundamental rights of Mexicans (such as the right to life, autonomy, among others). So, with his position and subsequent public acts he demonstrated an unfathomable incompetence, a transgressive management about respect for the fundamental rights of his fellow citizens and himself. The result obtained from the article reflects and evidences the lack of interest in both the right to life, dignity, social welfare, and human solidarity. As a preliminary conclusion, the *phenomenal* so-called political personalism was observed analytically, which has become a characteristic of the particularized governance, charisma and leadership that have been installed in certain democratic nations.

Keywords: COVID-19; AMLO; political personalism; common sense; public policies.

Introducción

La pandemia o endemia del coronavirus conocida con su nombre científico como el COVID-19 (SARS-CoV-2) ha causado modificaciones en todos los niveles globales del planeta, ha cobrado múltiples vidas humanas, ha provocado recesiones sociales, y, por tanto, retrocesos socioeconómicos que han dejado al descubierto la fragilidad de los poderes creados por los seres humanos.

Con la aparición súbita de un nuevo coronavirus (denominado ahora covid-19) en el planeta, específicamente, en la Región de Wuhan (en China) una problemática global ha removido los cimientos de todas las formas e interacciones de la humanidad, afectando su normalidad en todos los sentidos pensables.

La primero que se difundió como epidemia para luego ser declarada endemia del Covid-19 por la Organización Mundial de la Salud hace unos

meses, ha puesto a prueba las dinámicas institucionales y responsabilidades de los Estados nacionales, las dinámicas sociales sufrieron altibajos en todos sus órdenes (socioeconómicas, biomédicas y de gestión pública), las alteraciones que consigo trajo tiene pocos precedentes en los anales de la historia mundial[3], eso sí se parte del fenómeno de la globalización.

Un contexto peliagudo como el descrito, nos conduce a la variable atinente: como lo son las decisiones de peso que calibre o recalibre un jefe de Estado o un primer ministro en cuanto a la gobernanza política en tiempos endémicos, su papel, por supuesto, es decisivo y particularmente especial por su preponderancia en el sistema político que se aborde. Una coyuntura particular como esta requiere decisiones de Estado especiales ante lo cual ciertos gobernantes no dieron la talla mandataria.

Para el abordaje de estas variables temáticas peculiares se hizo uso de herramientas y enfoques analíticos de corte interpretativo en lo político e histórico como lo ha sido la autora Graciela Soriano. Hay que recalcar que la combinación de variables particulares nos remite a aristas temáticas de sensible tratamiento como lo son, de acuerdo con nuestro criterio: el invaluable respecto por la vida, la de responsabilidad social que recae en cada gobernante de Estado, la procura del Bienestar social de cada uno de los ciudadanos que conforman la sociedad mexicana en este caso, pero que se ha visto vulnerada en la esencia constitutiva de los Derechos Humanos Universales.

Ahora bien, se ha de apuntar que personalismos políticos de figuras públicas e influyentes como la del presidente de la República de México Andrés López Obrador (AMLO) al confrontar crisis sociales de esta dimensión de un virus gripal le somete sus actuaciones políticas y sociales al escrutinio público e histórico posteriormente, tanto sus declaraciones, decisiones y acciones públicas de Estado afectarían en gran medida los gruesos sectores sociales constitutivos de su sociedad en general, que dicho sea de paso alcanza el digito de casi 130 millones de habitantes; sin considerar el problema migratorio que desde hace unos meses viene padeciendo.

Sus actuaciones preliminares de Gobernanza generaron rasgos antagónicos, disputas y controversias que indefectiblemente lo condujeron

3 Informó la cadena comunicacional alemana **DW** a través de la periodista Victoria Dannemann el 23 de diciembre de 2020: "Ttras la detección de los primeros dos casos positivos entre personal militar que retornó a Punta Arenas, el 14 de diciembre, la Armada aplicó test a los tripulantes del buque y se identificaron tres contagiados. A esas alturas, las sospechas sobre la presencia del virus en la Antártica eran cada vez más fuertes. A través de un comunicado, el Ejército confirmó que personal de la base había presentado síntomas asociados al COVID-19, por lo que fue evacuado y llevado a la ciudad de Punta Arenas. "Un control médico y a la administración de una prueba PCR permitió constatar que 36 hombres resultaron ser positivos para COVID-19", señaló la institución. Entre ellos hay 26 militares y 10 civiles de una empresa contratista que estaban realizando trabajos de manutención. Los contagiados están en aislamiento bajo supervisión médica y, hasta el momento, "con un diagnóstico favorable y sin ningún tipo de complicación asociada", informó el Ejército" (DW, 2020: s/p).

por el camino de la diatriba. Líderes políticos polémicos como Andrés López, quien gano con una mayoría contundente en su última elección presidencial contrae una responsabilidad social mayor deducida. Su gobernanza no puede ser menos que aceptables ante las Doxas a nivel mundial como se demostrará adelante.

Para efectos del desarrollo del trabajo es menester esclarecer que es el personalismo político y el termino de representación social. En nuestro caso, se empleará la base categorial concebida por Graciela Soriano, personalismo político:

> (…) entendido como ejercicio personal del poder, bien como expresión de la pura voluntad de dominio únicamente sujeta a su propio arbitrio, correlativo a la debilidad institucional y/o al escaso arraigo de la norma, bien inscrito dentro de la normativa vigente, amparado tras el «estado de excepción» previsto en los textos constitucionales para situaciones extraordinarias (1990: 203).

La categoría del personalismo político hispanoamericano ha sido una noción conceptual desarrollada por Graciela Soriano, ella es el "Ejercicio personal del poder, bien como expresión de la pura voluntad del gobernante que esta únicamente sujeta a su propio arbitrio, bien como consecuencia del ejercicio del poder en el marco de los "estados de excepción" contemplados en las Constituciones para hacer frente a los problemas políticos o de cualquier índole, que afecten a la sociedad entera en épocas de crisis" (1996: 09). La aguda creatividad de la autora está apoyada la clásica tipología de Carl Schmitt en su obra sobre la Dictadura de 1968. En pocas palabras, para ella, el personalismo es un fenómeno social presente en las sociedades en cualquiera de las distintas dimensiones y etapas de la vida histórica (1996).

Es pertinente expresar que en América Latina los personalismos políticos no han sido fenómenos extraños al continente, han sido dinámicas del planeta político latinoamericano, sobran ilustraciones precisas de figuras como: Lula Ignacio Da Silva, Hugo Chávez, Evo Morales y tantos otros le dan ciencia cierta a lo que se plantea.

1. El Covid-19, la aparición de la Pandemia y el presidente de México

Ante una crisis sanitaria de incontables dimensiones abismada por la velocidad de la propagación inmisericorde del -COVID-19-, incluso con transformaciones de forma y fondo en todo el globo que demuestran la influencia sin par inadvertida por muchos Estados o formas de gobiernos, pese a las alarmas publicitadas por la Organización mundial de la Salud sobre un virus expansivo desde finales del año 2019.

La globalidad se vio impactada de repente, y donde su ritmo mundial expansivo fue desigual y con disimiles grados en cada nación que generaron diferentes dinámicas virológicas, de gestiones públicas o preventivas de acuerdo con las variables contenidas en cada país vale acceder; aun cuando sus causas o motivos fueron demarcadas, usualmente, por decisiones de Estados que involucraban a cada una de sus sociedades respectivas.

A nuestro criterio responde este planteo, en el ámbito de lo político se gestaron parte de estas dinámicas desiguales causando inequidades en las posturas frente a un virus sin partido ni ideología. Porque fueron sus capacidades decisorias las que imponían la impronta de un país actuase distinto a otro.

De ahí que las autonomías de los gobernantes de turno fueron cruciales, es probable que con la preexistencia de un líder carismático en ese sistema político ocasione hechos distintos a lo esperado por la sensatez de un conductor de país x. Ahora si se está en presencia de un personalista político la esperada sensatez política-sanitaria puede desvirtuarse si se les da nombre a protagonistas como Boris Johnson entre otros.

Ellos imprimen su propio sello, su propia dinámica para bien o para mal de ellos mismos. He allí que se inserta el ejercicio personal de la política a cargo del presidente mexicano.

AMLO genera sus propias características de gobernanza, es *sui generis* en sus disentimientos para con otros homólogos del poder. El dimensiona sus acciones asumiendo libertades que categóricamente rayan en la autocracia o autoritarismo personalizado. Con sus decisiones políticas *ad hoc* produce su singular hegemonía del poder político bajo el predominio o amparo de su "libertad personalista".

Es una hegemonía concéntrica de decisiones de Estado que no transitan por la estructura consensual habitual de una democracia sistémica. El pacto social ya conocido pierde terreno cuando se trata de actores políticos concentrados en su autonomía hegemónica de gobernar.

La ilustración tangible de las aseveraciones planteadas se le atribuye al líder personalista presidencial de México Andrés Manuel López, él ha sido un *target* de críticas acérrimas, pese a que mantenido –o sabido mantener- las cuotas de voluntades políticas de sus coterráneos.

A nuestro criterio analítico-interpretativo AMLO es la representación sociopolítica y fenoménica que emblematiza estos rasgos no usuales en un actor político democrático.

2. El personalismo de AMLO y la falibilidad de los Derechos Humanos Fundamentales durante la pandemia del COVID-19

De entrada, es conocido que el presidente mexicano es un actor de perfilada controversia durante momentos políticos como éste.

Descrito el personaje de escasa racionalidad en ese momento, se asumirán afirmaciones gruesas que serán respaldadas y sustanciadas en la medida que el desarrollo del articulo lo permita.

Es factible afirmar que casi todos los principios éticos de vida fueron violentados por este protagonista de la política mexicana, dado que su inicio con el desamparo de la fundamentabilidad de la Declaración Universal de los Derechos Humanos de 1948, cuando López Obrador no demostró ningún interés por el resguardo insustituible del bien universal de la vida humana; su respeto por la vida humana no fue una prioridad, sin descartar que la vida, en sí, es considerado un *principum* para la vida, siendo un imperativo ético del hombre y la mujer porque es un bien para sí mismo y para los demás (Berti, 2015).

Para AMLO no fue un interés primigenio el principio fundamental de la vida, que hace Parte del artículo 1º de la Declaración Americana de Derechos y Deberes del Hombre, aprobada el 2 de mayo de 1948, la cual expresa: "Todo ser humano tiene derecho a la vida, a la libertad y a la seguridad de su persona" (IX Conferencia Internacional Americana de 1948).

Ante una coyuntura contextual como la que aún se vive y nos aqueja, salta a la vista otro principio ético básico como lo es la responsabilidad individual y social también, de éstas nos encaminamos por la segunda, es oportuno recordar lo que significa responsabilidad grosso modo; al respecto Mestre precisa la derivación categorial sencilla de la responsabilidad: "La responsabilidad, buscando precisar su significado, es una cualidad del responsable, es la obligación de responder de una cosa. El responsable está obligado a responder de sus actos o a responder de alguna cosa" (Mestre, 2008: 237-238).

De modo que responsabilizarse significa e implica hacerse de una obligación propia, sobre todo en relación con el acto humano, y López no escapa a esta concepción general sino controlo su forma de pensamiento, sus decisiones ni su accionar. Dicho esto, es vital la asunción o consideración de lo que se define como responsabilidad social, a lo cual Schwald nos ilustra con esta referencia: "…la responsabilidad social como una filosofía de los actos; ser socialmente responsable es: "…ser consciente del daño que nuestros actos pueden ocasionar a cualquier individuo o grupo social" (2004: 103).

La actuación de AMLO fue irresponsable en esta dirección, su asesoramiento si lo tuvo denotó un marco cognitivo con un demostrable escaso sentido común, entendiéndose que su personalidad política no seguía ni obedecía las reglamentaciones de la salud pública ni de bioseguridad, lo que resultaba era controversial cuando éste y su equipo de gobernanza subestimaba e ignoraba las consecuencias y secuelas negativas de una pandemia advertida.

Fue probadamente comprobable que López Obrador privilegió sus intereses u otros intereses -bien hayan sido políticos-económicos o de otra clase- desoyendo a los expertos de la salud como epidemiólogos o virólogos de la Organización Mundial de la Salud (OMS), hasta llegando a increpar las matrices validas de quienes lo rodeaban de su gabinete.

No puede descartarse el caso puntual de AMLO, ya que su sentido controversial e irreverente al haber sido uno de las últimas ultimas figuras presidenciales en sostener su arbitrariedad y su tozudez desvirtuando o siendo indiferente a las secuelas impactantes que representaba el coronavirus descendiente desde el año 2019.

Por ende, su responsabilidad individual y social se ponen en tela de juicio si se puntualiza acerca del origen meses antes de la emergencia del virus. Y no sería sino hasta enero del año 2020 que se informaría oficialmente acerca del brote del virus en la ciudad de Wuhan y su rápida extensión[4]. Y pese a ello, apenas la Organización Mundial de la Salud declararía oficialmente su director Tedros en rueda de prensa mundial el 11 de marzo lo que sería una pandemia a nivel mundial.

De manera que se comprobará con el apartado que sigue las aseveraciones crítico-analíticas que se le han ceñido al líder del México actual.

3. La postura de López Obrador y el tratamiento desacertado en los inicios del pandémico virus de la COVID-19

El presidente de la República de México Andrés López Obrador (AMLO) cumplió en diciembre pasado un año en el cargo, se ha distinguido por ser un gobernante característico, para su tiempo auguró cambios para una nación vasta que está constituida aproximadamente por más de 127,5 millones de habitantes (2019) según fuente del Banco Mundial. Demás esta demarcar que la gobernanza de una extensión poblacional resultaría un desafío, hasta la fecha de este artículo, este actor político de izquierda no ha demostrado para este reto, si fuese juzgado por su oratoria ambigua, decisiones irracionales y sus actuaciones frente a la pandemia del COVID-19.

4 No es un secreto acerca de cómo ciertas personas ligadas a la medicina procuraron dar la alarma a través de las redes sociales.

Desde un principio la percepción de López Obrador fue la de negar la importancia y los alcances posibles de un virus gripal de alta incidencia ya demostrado en otras sociedades[5]. AMLO no mostró interés por ninguna de las recomendaciones divulgadas por la Organización Mundial de la Salud, *fue intransigente al no cerrar sus aeropuertos como tampoco ninguna de sus fronteras y vías terrestres y marítimas*.

Cronológicamente, la llegada del coronavirus fue anunciada en cadena nacional matutina el 28 de febrero 2020, luego el subsecretario de salud López-Gattel dictaminó que los primeros casos arribaron de Bergamo Italia días antes. Trece días después a esta fecha, el para el 12 de marzo su aparición incidió en la Bolsa Mexicana de Valores con una caída de un 7%, la Banca tuvo que suspender operaciones por 15 minutos.

Aun así, con la sucesión de hechos evidentes acotados antes, para el 19 de marzo AMLO descarta toque de queda en el territorio nacional. aunado a que

> El secretario de Relaciones Exteriores, Marcelo Ebrard, informó que llegó a un acuerdo con el secretario de Estado de Estados Unidos, Mike Pompeo, para que la frontera entre ambos países quede abierta, a pesar de la pandemia del coronavirus. Ebrard aclaró que la frontera estará abierta a la actividad económica, pero se suspenderán viajes no esenciales. No se cierra frontera con EU por coronavirus; sí se restringe paso a turismo, dice Ebrard (Milenio digital-, 2020: S/p).

Sorprende que, con todos estos indicios y vicisitudes sobre la mesa, un presidente pertinaz como López fue incapaz de cerrar fronteras y de seguir los protocolos y las medidas de seguridad subsecuentes (asumidas por su Secretario), so pena emitió oficialmente declaraciones cuestionables.

No obstante, el tiempo trascurría, y el siete de agosto del pasado año México arribaba a la trágica cifra de 50 mil fallecidos cuando registró 50.517 decesos. La misma fuente discrimina el saldo mortal: 353 muerte cada 24 horas, y para los primeros 7 días de agosto ya había 3.829 decesos, cifras que nos ofrecen una noción de la derivación del virus arrebatando cantidades de vidas humanas que pudieron haberse evitado si hubiese tomado las decisiones temporáneas acerca de las restricciones frente a la pandemia.

En los citados pies de páginas, sus declaraciones resultan innegables las evidencias del análisis discursivo, lo que manifiesta una carencia de seriedad, irresponsabilidad y un perfil de ineptitud en cuanto al tratamiento

5 El primer caso detectado ocurrió el 28 de febrero del pasado año, el 18 de marzo el primer deceso a raíz del COVID-19, los primeros casos en México DF. y Sinaloa. Se registra el primer caso con un ciudadano chino el 01 de febrero 2020 hospedándose en el Hotel Hilton centro histórico de DF. El Sistema de vigilancia epidemiológica hizo seguimiento con sus primeros síntomas para el 20 de enero, pero descartó que hubiese contagiado con los 18 individuos que tuvo contacto.

de la matriz pública en sus cadenas matutinas, el jefe de Estado posee una percepción de la realidad sino errónea por lo menos desacertada y absurda, demostrando ser un gobernante tildable de anodino e incapaz.

Porque AMLO -obedeciendo a intereses propios- niega los intereses de la humanidad de sus coterráneos con sus designios erráticos e ilógicos.

Tales intereses propios de poder desmienten la ***capacidad efectiva*** de su gobernanza, siendo producto de una estructura axiológica errada que es desnudada por la expansiva crisis humana de un patógeno con una agresividad natural, pone de manifiesto no solo la incredibilidad de su parte sino la hegemonía de unos intereses subrepticios que se origina en la perversión de valores éticos y bioéticos que tuviesen en su epicentro un irrespeto por lo humano.

Para él, los derechos fundamentales universales no importan –tampoco importan de cual generación fuesen- son infringidos en su más simple núcleo esencial. Pues si bien no solo miente con descaro, tampoco deja de subrayarse una percepción prestablecida cuando ocasionalmente se dirige a la sociedad común como si fuese "estúpida".

Sus disposiciones personalistas-neocaudillistas y discursos falaces nos inducen a ser contrastados en relación con las publicaciones nacionales emitidas por su Ministro de Salud. De hecho, es notorio el tratamiento degenerativo al marketing público-social de México, dado que sus comentarios solían ser absurdos, subjetivos e incongruentes en relación con la seriedad del avance del contexto pandémico, el cual distaba de ser "aplanado o domado" como "**alegremente**" aseguraba en sus frases matutinas.

Aparte de que el jefe de Estado demostraba no solo indolencia humana, aun cuando fue un candidato ostensiblemente votado en la elección del año 2018.

Por ejemplo, éste induce a sus pobladores: "…a abrazarse y compartir familiarmente en sitios públicos" (sesión matutina de AMLO) transgrediendo y atacando el rasgo del sentido común atribuido a la racionalidad social, a esto hay que repasar eventualidades acontecidas en mayo pasado[6].

Es posible inducir cómo la *percepción sesgada* de este neocaudillo coloca en tela juicio su Gobernanza frente a una complejidad real que requería aplomo y sapiencia al momento de tomar decisiones claves. Puesto que decisiones como las de no realizar pruebas masivas de (PCR)

6 Si se considera que el 12 de mayo aun había una negativa gubernamental por realizar "pruebas masivas de la enfermedad", se denota el comienzo de la saturación de los hospitales se oficializaba (para ese día ya se contabilizaban 38 mil 324 casos y 3826 muertos, el 13 de mayo ya son 4220 fallecidos y más de 40 mil contagios); para ese momento se refleja una inquietud primordial en el controversial Presidente: y era la de presentar el plan de reapertura económica hacia la "*Nueva Normalidad*" (Gobierno del estado de Oaxaca, 2019).

anteponiéndole un plan para una "*nueva normalidad*" deja entrever intereses subrepticios que no solo atentaban contra la seguridad de las vidas humanas de los connacionales, sino que, en su defecto, los somete -conscientes o no- a un trauma psicosocial de alcances sin precedentes en la historia.

Ahora bien, su marcado interés gubernamental <por afectar lo menos al área de la macroeconomía> derivó en la generación de un trauma psicosocial que subrayaba la indolencia humana gubernamental.

En este punto de análisis, es fundamental aclarar la concepción original del intelectual y psicólogo social Ignacio Martín-Baró, quien propone el "trauma psicosocial" como:

> La cristalización –o materialización– en los individuos de unas relaciones sociales aberrantes y deshumanizadoras como las que prevalecen en situaciones de guerra civil", pudiendo ser "…una consecuencia normal de un sistema social basado en relaciones sociales de explotación y opresión deshumanizadoras…el trauma psicosocial puede ser parte de una 'normal anormalidad' social (Oropeza, 2020: 02).

Es importante subrayar que su inclinación a "intereses de poder o que se deba una decisión unipersonal" patentada en los postulados de sus discursos sugestivos determinaron el exacerbado desenlace de contagios y, desde luego, de víctimas fatales en su territorio, generando un trauma psicosocial degenerativo, que vino a afectar los índices de pobreza extrema destacados por entidades reconocidas[7].

Con el denotado poder social demostrado por AMLO produjo un trauma psicosocial que formó parte "de una normal anormalidad social" si se acude a la frase de Martin-Baró. Transcurridos los meses subsiguientes, el contexto crítico incidió en el perfil decisional de AMLO y el de su gabinete. Por ejemplo, es preciso señalar que México para diciembre fue el primer país de América Latina en introducir y colocar la primera vacuna contra el

7 La Organización de las Naciones Unidas en su informe actual de 03 de diciembre de 2020 indica que producto de la incidencia negativa de covid-19 se registraron unos 207 millones de personas que se sumarian a las filas de la población que vive por debajo de la línea de pobreza en la actual crisis económica mundial de acuerdo con el Programa de las Naciones Unidas para el Desarrollo (PNUD). Igualmente, la Conferencia de la ONU sobre Comercio y Desarrollo (UNCTAD) publicó recientemente el costo social en los países menos desarrollados en el globo al momento. (los mismos son los que tienen menos medios financieros e institucionales "para responder a este tipo de emergencias". Crudamente otros informes provenientes de dicha conferencia (UNCTAD) ofrecen registros que solo en el 2020 aumentaron a más de 32 millones de personas que sobreviven con menos de 1,9 $ llevando las tasas de pobreza 32.5 al 35.7 %. Esta entidad que la pandemia ha afectado especialmente a los países menos desarrollados "porque son economías más vulnerables y con un menor nivel de resiliencia". Asimismo, la data de la ONU indica que los 47 países menos desarrollados representan menos de 1,3 PIB mundial pese a ser hogar de más de 1060 millones de habitantes. Por tanto, según esta fuente en el anual del 2020 "Estos países tendrán su peor desempeño económico en 30 años (acompañada de una baja acentuada de sus ingresos y la perdida generalizada de empleos con déficits fiscales mayores" (ONU, 2020).

avasallante virus letal[8].

En el minuto de escribir este estudio, es oportuno resaltar como el Director General de la Organización Mundial de la Salud, Tedros expresó su gran preocupación acerca de que la distribución equitativa de las vacunas se encuentran en "*grave riesgo", por cuanto el Programa Mundial conocido con el nombre de COVAX (que busca asegurar dosis del antiviral para los países con bajos recursos) está siendo bombardeado por el reciente acaparamiento de dosis de vacunas ocasionado por diversos países que han llevado adelante "pactos" con las empresas farmacéuticas, lo que obtiene como resultado "respuestas descoordinadas y una disrupción social y económica continua" causando un mercado caótico motorizado por iniciativas nacionalistas que se han concretado en las últimas semanas del presente año 2021*.

Sus afirmaciones son contundentes, cuando cita que tales egoísmos nacionalistas solo "prolongará la pandemia"[9].

A la fecha del 24 de enero el presidente estudiado a sus 67 años anuncia por su cuenta de Facebook "…que se contagió de covid-19, que sus síntomas son leves y que se siente optimista.", a pesar de tener problemas cardiacos y padecer de hipertensión como se supo.

Es vital apuntar que el mandatario López "no usa cubrebocas en espacios públicos" y "…solo se le ha visto llevarlo cuando *viaja en avión."* (www.AFP, 2021). A la fecha actual 05 de octubre del 2021, las cifras negativas expresan el panorama con los alcances desorbitantes evidenciables tanto por las instituciones de la *Universidad John Hopkins y Our World in Data*[10].

8 Vale destacar el dato de que México se situó como el primer país de América Latina en vacunar en vista de la coyuntura critica de la cual ha sido blanco, razón por la cual el presidente con hechos demuestra la urgencia médico-sanitaria que padece en la segunda nación de mayor densidad poblacional después de Brasil. Aun así, de cara a la aparición de una nueva *cepa o mutación agresiva* del virus gripal en Reino Unido para el 24 de diciembre del año pasado, el presidente se niega a cerrar los vuelos de enlace con esa nación, minando las probabilidades de contener un poco más su avance.

9 Ya que se habían administrado más de "…39 millones de dosis de vacunas en solo 49 países de ingresos más altos". De este modo advirtiendo el director exhorta a lo siguiente: "Pido encarecidamente a países y fabricantes que dejen de cerrar acuerdos bilaterales en detrimento del COVAX (…) El nacionalismo vacunal perjudica a todo el mundo." (AFP, 2021). Especialmente porque el planeta se encuentra "…al borde de un fracaso moral catastrófico, y el precio de este fracaso se pagará con las vidas y el sustento de los países más pobres", alertó Tedros. Con lo que culmina: "…no es justo que gente sana y joven en naciones ricas acceda a la vacuna antes que grupos vulnerables en países más pobres". (OMS, 2020: s/p).

10 A la fecha del 05 de octubre de 2021: México reportaba más de 279.206 decesos a causa del Covid-19; con una tasa de contagio de 3.684.242 de personas al interior, solo superada por Brasil, y éste tras los EE. UU (con más de 704 mil muertes): Brasil sería el segundo país a nivel mundial con la mayor tasa de letalidad con más de 598 mil muertes; misma fecha. (portal de Universidad John Hopkins). Para el día 03 de octubre del año 2021 el digito calculado de fallecidos a nivel mundial sobrepasa por encima de 4.8 millones de decesos en mortandad (Universidad John Hopkins). Por supuesto, no puede dejarse al margen que para esa fecha a nivel global se había alcanzado un porcentaje de 34.5 de vacunación, pero con una inequidad y desproporción de vacunación abismal entre naciones de acuerdo con (OMS, 2020: s/p).

Reflexiones finales

Los personalismos políticos son fenómenos sociopolíticos que se han anidado con firmeza en algunos países de América Latina, como es el caso de las Republica de México. Su líder López Obrador se enmarca en esta dinámica compleja, especialmente si se consideran examinar las decisiones e incidencias contraídas con la llegada del covid-19 a cada territorio a través de las cuales se pueden reafirmar perfiles característicos con acendradas personalidades contradictorias.

Con la aparición impertérrita del virus del COVID-19, las trasformaciones de las cotidianidades de las naciones eran inevitable obligando a los gobernantes y a sus equipos a tomar de decisiones cruciales para resguardar el desarrollo humano del país mencionado.

AMLO fue uno de ellos, apoyado en sus rasgos carismáticos se comprometió en la complejidad de decisiones o arbitrariedades que reflejaban una absurdez sin sentido común.

Es claro que con sus transgresiones López Obrador vulnero la mayoría de las leyes sanitarias de lo público **condenó** a miles de individuos de toda clase de exposiciones del patógeno que había cambiado a la cotidianidad global.

El jefe de Estado con su abyecto pensamiento y conducta depuso sus prioridades, descolocándola estructura valórica de los aprobados derechos fundamentales con respecto a las vidas humanas mexicanas. El poder soberano que le fue delegado democráticamente estaba entredicho.

Al considerar las decisiones contravenidas descritas, es factible asumir que fueron un ataque o un atentado a cada una de las vidas que se situaban en el territorio azteca.

Es deductivo y razonable afirmar que cada uno de los mexicanos fue convertido en un target masivo potencialmente expuesto a la virulencia del virus citado, es conocido por todo el planteamiento referido a que éste –el patógeno– no discrimina ni estrato ni clase social. Y no solo estaban a merced del virus, sino a merced también del poder decisional discrecional de un personalista acendrado.

Si bien con cada decisión unipersonal transgredía no solo el resguardo de una vida, sino que también torpedeaba el carácter sistémico de la democracia bajo la cual fue elegido. Quizás este contexto es dubitativo si se hipotetiza sobre algún tipo de connivencia entre el mandatario y la *perversidad de algún motivo o interés* elitista del poder local.

¿Sería posible decir que un líder como éste es antidemocrático o más bien un actor autoritario de decisiones insurrectas? Sus atropelladas

actuaciones dejan margen a lo dubitativo. Atentar contra la vida de sus electores si se considera la mayoría voluntaria que aún lo secunda.

Si las vidas humanas no prevalecen por encima de *"sus intereses o personalidad hegemónica*" es posible aseverar que hubo contenidos claroscuros que le otorgaron significado a la percepción de AMLO, incluso cuyos intereses personales o de poder ameritan ser investigados más allá de las subjetividades que nos puedan ensombrecer el juicio científico acerca de dicha complejidad mexicana. Contexto que se empaña más si se considera que el jefe Mayor de todos los mexicanos se empeñaba en presentar planes económicos de emergencia o de reactivación del sector comercial como era notorio, pueden inducirse que hubo alguna motivación motorizadora de esa índole.

La exacerbada y tozuda arbitrariedad de dominio público que exhibía el Presidente socialista nos obliga a interrogarnos acerca de escenarios donde los umbrales de los hechos son irrevocables: indiferencia o indolencia por las vidas humanas o el irrespeto por los Derechos Universales del Hombre de 1948 enmarcados en una *etapa crítica* para todo el globo que debía ser abordada sin demagogia, pero si con sentido común y de percepción o comportamiento reflexivo.

De manera que la discrecionalidad de los poderes en manos de personalistas y demagogos sin sentido común al margen de lo absurdo no podía sino ser un motivo determinante para causar estragos en el mapa poblacional de México. (Son más de 291.147 connacionales fallecidos para el 16 de noviembre del año en curso 2021, y más de 3 millones 845 mil de contagios para la misma fecha, registrados por el portal de una Universidad John Hopkins).

El lúgubre escenario ocasionado el insensato actor de la política, subjetiviza una política pública clave para remediar un entorno sui generis, un agente político, que pese a la cifra de fallecidos in crescendo, ahora dedicaba sus mañanas a otras áreas temáticas sesgadas por su insurrecta conducta que atentaba contra cada una de las normas básicas de salud y de sanidad consabidas por la Organización Mundial de la Salud. El carismático gobernante no esgrimió una conciencia que resguardase las medidas necesarias frente a un contexto bien sea de "*pandemia-endemia y sindemia"*[11].

La *lógica del poder* no daba tregua a la racionalidad de la bioseguridad sanitaria, sino a la absurdez y atrocidad de un entramado de intereses que han de saber y conocer las cúpulas gubernamentales actuales, la lógica hegemónica es desproteger el sagrado derecho inalienable a la vida humana. Las vidas de casi 130 millones de almas mexicanas estaban bajo

11 A raíz de las circunstancias, la determinación de esta variable es una definición en pleno debate actual.

la discrecionalidad de un poder personalizado; donde es más importante exigir que España pida perdón por desmanes de la conquista de América (Sesión matutina 01 de octubre de 2021).

Cuando el Estado privar de la vida a un ser humano es una aberración atroz del poder que detenta quien esté en el timón del tercer país con mayor densidad poblacional de toda América. Cuando al Jefe Máximo de Estado no le es primordial la salud de su propio pueblo, cabe preguntarse ¿Qué sitio ocupa la responsabilidad política que le fue delegada? ¿Acaso es la certeza de un principio de autonomía del poder individualizado subyacente lo que prevalece? Según el líder poseedor de una credibilidad aun sin dubitación de popularidad política.

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Comprehensive methods for investigating crimes in the illegal trafficking of precious metals and stones

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Abstract

The objective of the article was to develop theoretical provisions for structuring comprehensive methods of crime investigation and to form, on their basis, effective recommendations for the dissemination and investigation of crimes committed in the field of trafficking in precious metals and stones. The authors present comprehensive methods for investigating crimes in the field of illegal circulation of precious metals and stones. An archival 300 criminal cases were examined, the preliminary investigation of which occurred between 2015 and 2019, and in addition, an online interview was conducted with 220 law enforcement officers fighting such crimes. As a result, comprehensive methods have been developed to investigate these crimes, as well as a system of provisions and scientific recommendations for the dissemination and investigation of thefts, trafficking, violations of the rules for the delivery of precious objects. He was interested in designing a method for declaring, illegal enterprise combined into a single subject of investigation with due attention to criminal and forensic prerequisites, including the following structural elements: a) comprehensive forensic characteristics of such crimes, and b) activities of dissemination and investigation of such crimes using the situational approach in its various stages.

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Métodos integrales de investigación de delitos en el tráfico ilegal de piedras y metales preciosos

Resumen

El objetivo del artículo fue desarrollar disposiciones teóricas para estructurar métodos integrales de investigación de delitos y formar, sobre su base, recomendaciones efectivas para la divulgación e investigación de delitos cometidos en la esfera del tráfico de metales y piedras preciosas. Los autores presentan métodos integrales para investigar delitos en el ámbito de la circulación ilegal de metales y piedras preciosas. Se examinaron 300 casos penales de archivo, cuya investigación preliminar ocurrió entre 2015 y 2019 y, además, se realizó una entrevista en línea a 220 agentes del orden público que luchan contra tales delitos. Como resultado, se han desarrollado métodos integrales para investigar estos delitos, así como un sistema de disposiciones y recomendaciones científicas para la divulgación e investigación de robos, tráfico, violaciones de las reglas para la entrega de objetos preciosos. Interesó diseñar un método para declarar, emprendimiento ilegal combinado en un solo tema de investigación con la debida atención a los requisitos previos criminales y forenses, incluidos los siguientes elementos estructurales: a) características forenses integrales de tales delitos, y; b) actividades de divulgación e investigación de tales delitos utilizando el enfoque situacional en sus diversas etapas.

Palabras clave: metales preciosos; piedras preciosas; circulación ilegal; crimen organizado; métodos para la investigación de delitos específicos.

Introduction

Characterized by small size, high safety and liquidity, precious metals and precious stones are always in the focus of the underworld, therefore this sphere is seriously criminalized. The crimes related to the illegal trafficking of precious metals and precious stones are classified according to their organization, professionalism, seriality, and territory (Wisniewski *et al.*, 2018).

During the rapid development of science and technology, criminals commit even more daring economic crimes using modern technologies. The methods of committing crimes have become sophisticated and diverse. While developing methods aimed at a particular type of crime, it is impossible to cover the entire range of measures for their disclosure and investigation since other types of crimes can organically interweave into the first one (Kirillova and Kurbanov, 2017).

While analyzing the tactical tasks solved during the investigation of such crimes, we established that the existing generic methods help investigate only one type of crimes and narrow the possibilities for investigating various types of theft, illegal trafficking, violations of the rules for delivery to state, as well as the illegal entrepreneurship of precious metals and precious stones. When investigating these types of crimes, most organizational and tactical tasks, as well as methods for their solution, coincide, therefore there is an obvious need to create comprehensive methods for investigating the above-mentioned group of crimes and formulate its theoretical provisions (Chowdhury, 2021).

These methods should cover the following crimes: theft, illegal trafficking, violations of the rules for the delivery of precious metals and precious stones to the state, illegal entrepreneurship. They will allow practitioners to apply a unified approach to the investigation of several types of crimes, regardless of their legal assessment. Its recommendations can be applied once the initial information about the crime of any type is received until a preliminary investigation is completed and an indictment is sent to the court. To simplify the nomination of the proposed approach, we will designate it as a method for investigating crimes in the sphere of precious metals and precious stones.

The study aims at developing theoretical provisions for comprehensive methods of crime investigation and forming, on their basis, effective recommendations for the disclosure and investigation of crimes committed in the sphere of precious metals and precious stones trafficking.

1. Methods

The methodological basis of the research was formed by modern scientific theories and the system of philosophical knowledge as a universal dialectical method of cognizing reality. The study comprises 300 archival criminal cases, whose preliminary investigation was carried out between 2015 and 2019.

The online interviews we conducted embraced 220 law enforcement officers fighting against such crimes, including 107 investigators and 113 operational officers of internal affairs bodies.

During the research, we used historical, systemic-structural, comparative-legal, logical-theoretical, sociological, and statistical methods. These methods were applied comprehensively to ensure the objectivity and reliability of the study results.

The methodological principle of the research was to observe the relationship between the general, the particular and the individual, the historical and the logical, the abstract and the concrete.

The theoretical basis of the research was formed by scientific works in the field of philosophy, sociology, general theory of law, constitutional, criminal, criminal procedure law, criminology and other branches of law, scientific provisions of forensic science, the theory of law enforcement intelligence operations.

2. Results

In the structure of economic crime, crimes in the sphere of trafficking precious metals and precious stones make up no more than 10%. At the same time, acts directly related to the illegal circulation of precious stones account for about 3-5% of the total number of crimes. The study has revealed that in the total volume of stolen precious metals and precious stones, gold is 38%, silver is 28%, platinum and platinoids are 10%, diamonds are 12%; emeralds and alexandrites are 10%, rubies and sapphires are 2% (Coetzee and Horn, 2007). Precious minerals often exist in the form of individual nuggets of various weight, veins and other inclusions, as well as in the form of sand and placers in deposits.

A criminal stealing such objects should know their structural and physicochemical features to establish their authenticity. Natural precious metals and gemstones differ from their artificial counterparts, so a person who steals them requires basic mineralogical knowledge and practical skills to distinguish a precious mineral from others. Thus, an investigator should also have sufficient knowledge in the field of mineralogy.

There are several approaches to the classification of crimes: by the method a crime was committed; by the degree of its concealment; by criminal experience; by the place of its commission; some other criteria.

It is necessary to form a separate category of crimes related to theft, violations of the rules of delivery to the state, illegal entrepreneurship, illegal circulation of precious stones (diamonds, emeralds, rubies, sapphires, alexandrite's) and precious metals (gold, silver, platinoids). This classification should be supplemented with a differentiation based about criminal encroachment, which is typical of crimes in the sphere of illegal circulation of precious metals and precious stones. The basis for

this classification is not only the subject of criminal encroachment but also features of its extraction, enrichment, and protection, which directly affects the disclosure, investigation, and prevention of these crimes.

The following classification can be proposed for the illegal trafficking of precious metals and precious stones (Table 1).

Table 1. The classification of crimes related to the illegal circulation of precious metals and precious stones

<table>
<tr><td colspan="4">Classification related to the objective aspects of a crime:</td></tr>
<tr><td colspan="2">By the method a crime was committed:</td><td colspan="2">By the method of concealing a crime, if it is not an integral part of the method of committing the crime:</td></tr>
<tr><td colspan="2">Theft by opening washing or enriching devices or through free access; exploiting precious metals and stones without a license; selling precious metals and stones in violation of special handling rules, as well as the illegal transportation, shipment, storage, movement of such goods across the border</td><td colspan="2">Keeping the stolen in hiding places or hiding it inside one's body, including smuggling goods; hiding precious metals and precious stones in private houses, apartments, or vehicles</td></tr>
<tr><td colspan="4">Classification related to the object of a crime:</td></tr>
<tr><td>By a field of activity:</td><td colspan="2">By the place where a crime was committed, or the object of encroachment was located:</td><td>By the methods used to protect the direct subject of encroachment:</td></tr>
<tr><td>The mining industry, metallurgy, manufacturing industry, jewelry, trade, and foreign trade</td><td colspan="2">Places where precious metals and stones are directly mined: enriching factories, dredging engines, open-pit mines, washeries, mines, geological-prospecting sites, etc.; the central regions of the country and the territory of customs terminals when crossing the border</td><td>With or without electronic security, with a common security system provided by paramilitary services or departmental services, as well as an unguarded territory</td></tr>
<tr><td colspan="4">Classification related to the subjective aspects of a crime:</td></tr>
<tr><td colspan="2">With premeditated intent</td><td colspan="2">With sudden intent</td></tr>
<tr><td colspan="4">Classification related to the subject of a crime:</td></tr>
<tr><td>Alone or jointly</td><td>For the first time or repetition</td><td>Persons who have or do not have access to the object of encroachment</td><td>Men and women</td></tr>
</table>

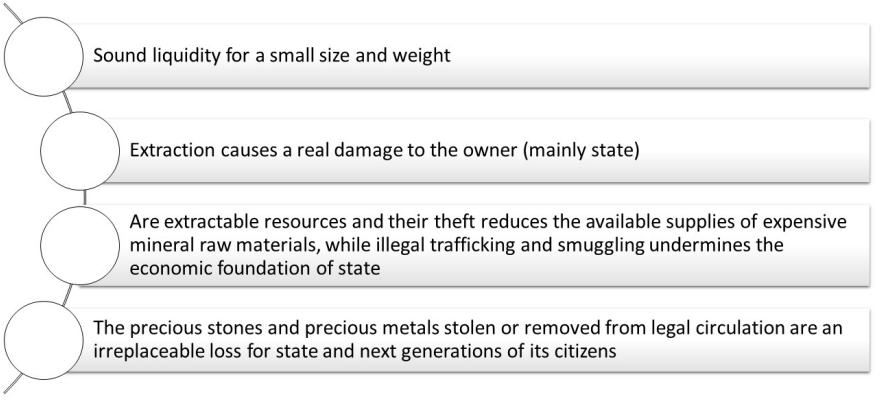
Source: own elaboration.

Thus, this criminal classification allows not only to differentiate various types of crimes but also to highlight the methods of their investigation.

When committing crimes related to the illegal trafficking of precious metals and precious stones, the subject of criminal encroachment (a materially expressed element of the object) are precious metals and natural precious stones, including gold, silver, platinum and platinum group metals, diamonds, emeralds, sapphires, rubies, alexandrite's and sea pearls. A condition for criminal liability is the infliction of large-scale damage to citizens, organizations, and the state. Constituent elements of a crime are material and formal. A crime is considered completed from the onset of harmful consequences.

The typical features of the subject of encroachments are presented in the table below (Table 2).

Table 2. Typical features of the subject of crimes related to the illegal circulation of precious metals and precious stones



Source: own elaboration.

The information about stolen and illicitly trafficked precious metals or precious stones might indicate their movement from places of their theft to buyers, carriers, appraisers, and jewelers; sales channels (within the country and abroad); their temporary storage (apartments, private houses, summer cottages, dormitories, etc.) belonging to the person who committed the theft or their relatives, friends, acquaintances (Flynn, 2009).

We considered the factors forming the structure of the theft of precious metals and precious stones and determined the following interrelated components:

1. The geographical location and natural-climatic conditions of the regions where precious raw materials are mined and enriched.
2. The conditions immediately preceding a crime and accompanying it; their impact on the committed offense.
3. The spatial position of an object (distance from settlements and roads), its structural features.
4. The nature of the terrain, its relief, the presence and state of infrastructures, routes and distance between individual administrative points, the possible communication for arrival and departure from the crime scene, the transportation of the object.
5. The system of features characterizing the object of criminal encroachment (a factory workshop, a mining and processing plant, a mining partnership, a washery for extracting precious raw materials, a storage of mineral raw materials, a tailing dump, its production, technical and communication features).
6. The location of premises, i.e., the object of encroachment in relation to other residential and administrative buildings (structures), their condition, the presence and nature of protection (signaling system), etc.
7. The work schedule of an enterprise (organization), the movement of people and security representatives, transportation (water, rail, air, motor), the state of radio and telecommunications at the crime scene.
8. Circumstances that contributed to or hindered the preparation, commission, and concealment of the crime, and whether the criminal took them into account.
9. Unconventional factors manifested in the current situation and their influence on the crime.
10. A real opportunity to take advantage of an artificially created or objectively developed situation to commit the crime (Nikonovich, 2015).

The above-mentioned set of components can be conditionally subdivided into two groups: permanent and temporary factors. The time a crime was committed is a component of the environment. The study of criminal activity with due regard to the time factor helps to better understand the functioning of the underworld, including the time needed to nurture the idea of organizing illegal activities, preparing the necessary tools, etc. In addition to the place and time a crime was committed, the crime situation

also includes the circumstances that contribute to the commission of such crimes (Van den Eeden *et al.*, 2016).

3. Discussion

A typical feature of crimes that infringe on public relations, ensuring the circulation and safety of precious metals and precious stones, is the fact that they are interconnected and accompany each other. Thus, the theft or violation of the rules for the delivery of precious metals and precious stones to the state might be associated with illegal entrepreneurship and illegal circulation. Furthermore, a series of actions within the objective aspect of a crime can simultaneously be part of another one (Wang *et al.*, 2020). For example, when stealing precious metals and precious stones from enrichment enterprises, a criminal, prior to the sale of this jewelry, has to hide them at home or keep them for some time. In this regard, large-scale storage is a criminal act. The direct object of a crime is public relations that regulate entrepreneurial activity.

While studying methods for investigating the theft, violations of the rules of delivery to state, illegal entrepreneurship, illegal trafficking of precious metals and precious stones, and smuggling, we can conclude that comprehensive and consolidated methods for investigating this group of crimes are necessary for their successful disclosure.

A group of complex methods for investigating crimes should include a set of recommendations based on both the criminal and forensic classification of crimes. Complex methods are built over constituent elements of a crime according to the criminal classification (McLamb, 2015). However, they should also consider groups of crimes united by specific and generic objects, i.e., hybrid and heterogeneous crimes which, if taken in isolation from the forensic criterion, do not have any common patterns.

For example, theft, violations of the rules for delivery to state, illegal circulation of precious metals and precious stones, as well as illegal entrepreneurship in this area, do not have a common criterion since these crimes are of different types. It would be impossible and inexpedient to combine such crimes within a single classification and, accordingly, investigative methods if it was not for the use of an additional forensic criterion. The latter is an area of activity, i.e., the circulation of precious metals and precious stones. In this case, the commonality and interdependence of these encroachments become obvious if these crimes are committed sequentially or in combination, for example, in connection with their abduction, illegal storage and circulation. Additional forensic grounds for classification are presented in the table below (Table 3).

Table 3. Additional forensic grounds for classification

1.	Similar elements of the environment and conditions conducive to the commission of crimes
2.	Similar methods for committing and concealing crimes (for example, methods for concealing the subject of a crime are the same for theft, violations of the rules for the delivery of precious metals and precious stones to state, as well as for their illegal turnover and smuggling)
3.	Similar characteristics of the subjects committing these crimes
4.	Similar features of the investigation

Source: own elaboration.

When considering such acts as criminal activity within the framework of a special forensic classifying criterion (the illegal circulation of precious metals and precious stones), we revealed that these components form its structure.

Complex techniques differ from special ones since they embrace both criminal and forensic grounds for classification (Hall, 2010). In this context, various types of crimes are combined on several criminal grounds. Their commonality is conditioned by the fact that they are performed in real and ideal aggregates. At the same time, their commission stipulates the same intent of organizers, instigators, accomplices and perpetrators of a crime, their common motives and goals, single mechanisms of organized criminal activity. Thus, certain elements of forensic models of seemingly heterogeneous criminal activity are closely interconnected, which ultimately determines the specific advancement and development of versions, their planned verification, tactics of investigative actions and the specifics of conducting tactical operations.

Thus, the subject of illegal trafficking (precious metals and/or precious stones) is stolen or illegally extracted (mined without a license) or is in illegal storage for some time. In this case, it refers to complex criminal activity. It is mainly manifested in the fact that criminals commit several acts in the field of theft, illegal trafficking, illegal entrepreneurship, violations of the rules for the delivery of precious metals and precious stones to the state, which forms inextricably linked real and ideal cumulative offenses in the context of criminal legal qualifications (Miller and Massey, 2018). Methods for investigating this group of crimes should be just as complex.

The conditional selection of complex methods is expressed in the fact that many recommendations introduced into practice, developed as typical or special ones, are outdated at the present stage of the development of crimes and means of combating them. They need to be modernized, enlarged, and transformed into complex ones.

The development of complex investigative methods should be based on both forensic and criminal classifications.

Comprehensive methods for investigating crimes in the sphere of illegal trafficking of precious metals and precious stones is a system of interconnected elements having a certain structure, according to which its elements are arranged in a strict sequence and form their own subsystems (Mateen and Tariq, 2019). An element of this system is a complex forensic feature and the corresponding recommendations for the disclosure and investigation of several types of crimes. Along with forensic recommendations, comprehensive methods also contain their justification in the form of scientific and empirical provisions.

One part (the theft of precious metals and precious stones) of such methods is harmoniously included in the basic investigation of the theft of other people's property. Its other part (an illicit trade and violation of the rules for the delivery of precious metals and precious stones to state, illegal entrepreneurship) is added into the basic investigative technique for disclosing crimes in the field of economic activity.

At the same time, such methods have a certain degree of generalization since they form a generic group in relation to specific investigative techniques: theft, illegal trafficking, violations of the rules for the delivery of precious metals and precious stones to the state, illegal entrepreneurship (Horsman *et al.*, 2019). The unifying factor is also the generic concept of the subject of crimes, i.e., precious metals and precious stones in conformity with their types (gold, silver, diamonds, etc.).

The system of forensic techniques for investigating crimes in the sphere of illegal trafficking of precious metals and precious stones is presented in the table below (Table 4).

Table 4. The system of forensic techniques

Level One	General provisions of investigative techniques characterized by the greatest degree of abstraction
Level Two	Basic techniques of investigating crimes in the field of economic activity and the theft of other people's property, and comprehensive methods for investigating thefts, violations of the rules of delivery to state, illegal trade in precious metals and precious stones, illegal entrepreneurship
Level Three	Specific methods for investigating the theft, illegal trafficking, violations of the rules for the delivery of precious metals and precious stones to state, illegal entrepreneurship

Level Four	Special methods for investigating the theft, illegal trafficking, violations of the rules of delivery to state and illegal entrepreneurship of precious metals and precious stones by a certain place: in various industries (the mining industry, nonferrous metallurgy, jewelry); by the subject of encroachment: methods for investigating theft, illegal trafficking, illegal entrepreneurship and violations of the rules for delivering industrial diamonds, emeralds, alexandrites, sapphires, rubies, industrial gold, silver and platinoids to state which have the highest degree of specification

Source: own elaboration.

Thus, the role of the above-mentioned complex investigative techniques in the system of forensic methods is visible.

When forming group methods in addition to classifications, the following principles should also be taken into account: the establishment of general provisions that underlie a group association; the presence of objective patterns common to the commission of all types of crimes included into the group; the determination of investigation areas that are general (universal) for all the types of crimes included into the group under study; the definition and description of a general approach to the disclosure and investigation of the above-mentioned group of crimes.

The specifics of forming such methods were the generalization of the existing experience expressed in private methods for investigating the theft of industrial gold and diamonds, as well as the illegal trafficking of precious metals and precious stones. Generalization is manifested in the identification of the most general, significant, and essential properties of the studied phenomena and the exclusion of accidental and less significant phenomena.

Conclusion

The study has developed comprehensive methods for investigating crimes in the sphere of precious metals and precious stones trafficking as a system of scientific provisions and recommendations for the disclosure and investigation of theft, illegal trafficking, violations of the rules for the delivery of precious metals and stones to state, illegal entrepreneurship combined into a single research subject with due regard to criminal and forensic prerequisites, including the following structural elements: a) comprehensive forensic features of such crimes; b) activities for the disclosure and investigation of such crimes using the situational approach at its various stages.

The forensic methods for investigating crimes in the sphere of precious metals and precious stones trafficking are divided into four main levels. The first level is general provisions of investigative techniques characterized by the greatest degree of abstraction. The second level includes the basic techniques of investigating crimes in the field of economic activity and the theft of other people's property, and comprehensive methods for investigating thefts, violations of the rules of delivery to state, illegal trade in precious metals and precious stones, illegal entrepreneurship.

The third level comprises specific methods of investigating theft, illegal trafficking, violations of the rules for the delivery of precious metals and precious stones to the state, illegal entrepreneurship. The fourth level is made by special methods for investigating the theft, illegal trafficking, violations of the rules of delivery to state and illegal entrepreneurship of precious metals and precious stones by a certain place: in various industries (the mining industry, nonferrous metallurgy, jewelry); by the subject of encroachment: methods for investigating theft, illegal trafficking, illegal entrepreneurship and violations of the rules for handing over industrial diamonds, emeralds, alexandrite's, sapphires, rubies, industrial gold, silver and platinoids to state which have the highest degree of specification.

While analyzing the forensic characteristics of certain types of crimes included in the above-mentioned group, we established the main interrelationships of their elements and the corresponding four models of the commission of crimes:

1. The connecting element of forensic features of the theft of precious metals and precious stones is the subject of criminal encroachment, which determines, on the one hand, the place of theft (the territory of an industrial enterprise) and its method (through free access); on the other hand, its realization is illegal trafficking (extraction sites: cities, workers' settlements, etc.) representatives of organized crime; b) the main form of embezzlement was theft committed by men previously not convicted who were employees of enrichment enterprises.
2. The main form of illegal circulation of precious metals and stones was their sale to representatives of organized crime, buyers of gold and precious stones, jewelers, representatives of the patriarchy men previously not convicted who kept and carried jewelry or transported them in vehicles.
3. The predominant methods of violations of the rules for the delivery of precious metals and precious stones to state and illegal entrepreneurship in this area were as follows: the unauthorized mining of precious metals in the channels of taiga streams and rivers under the guise of exploration and illegal development of mines,

pits, quarries, tailing dumps by men earlier not convicted stored and carried jewelry with them or transported them in a vehicle.

In general, the complex characteristics of such crimes are interconnected in the following way: the connecting element of this group of crimes is the subject of a crime, i.e., precious metals and precious stones (gold is 41%, silver is 25%, platinum and platinum group metals are 7%, diamonds are 18%, emeralds and alexandrite's are 7%, rubies and sapphires are 2%). Firstly, it correlates with the situation in which crimes are committed (the territory of mining regions and external borders of the country: customs, customs posts, and terminals) in the spring-summer period, on weekends and holidays, in the evening and at night. Secondly, it relates to the methods of committing a crime (theft is 99%, sale is 60%, storage is 25%, transportation and shipment is 15%).

Thirdly, it is linked with the methods of concealing the subject of a crime (in outer clothing and underwear, in the natural cavities of the body, in everyday objects and vehicles). Fourthly, it depends on the personality of a criminal (an adult previously not convicted, having secondary or higher education, a married man positively characterized at the place of work and residence who committed a crime with a mercenary motive). Fifthly, it can be a person who committed a crime in a group of co-perpetrators.

Comprehensive forensic characteristics of these crimes allow one to develop reasonable versions, outline a plan of operational and investigative measures and effectively investigate crimes included in this group without the practice of investigating any type of these crimes. In addition, they allow developing an effective investigation program for all the crimes included in the group.

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Effectiveness of legislation and implementation of the rule of law

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Abstract

The article aims to consider the relevant aspects of such a multifaceted phenomenon as efficiency in state activities and legal systems. In modern Russia, not only the effectiveness of laws, but also the effectiveness of state activities in implementing the rule of law, gains importance. To solve the tasks posed, they used the following methods: logical (description, classification), structural-system, formal-dogmatic and comparative. As a result of the study, it has been revealed that the effectiveness of legislation and the effectiveness of activities to implement the rule of law are inextricably linked to the social component, that is, to meet public needs and interests. It is concluded that the effectiveness of Russian legislation is related not only to the achievement of the objectives set by the legislator, the fulfillment of the legislative objectives and the results obtained, but also to the fulfillment of the laws with the needs of social development and public interests. Effective implementation of the rule of law also has a prominent social component. The abstract principles of the rule of law must be full of real social content.

Keywords: legal efficiency; realization of the rule of law; legal principles; social reality; public interest.

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Efectividad de la legislación e implementación del estado de derecho

Resumen

El artículo tiene como objetivo considerar los aspectos relevantes de un fenómeno tan multifacético como la eficiencia en las actividades estatales y los sistemas legales. En la Rusia moderna, gana importancia no solo la eficacia de las leyes, sino también la eficacia de las actividades estatales en la implementación del estado de derecho. Para resolver las tareas planteadas, se utilizaron los siguientes métodos: lógico (descripción, clasificación), sistema-estructural, formal-dogmático y comparativo. Como resultado del estudio, se ha revelado que la efectividad de la legislación y la efectividad de las actividades para implementar el estado de derecho están indisolublemente vinculadas con el componente social, es decir, satisfacer las necesidades e intereses públicos. Se concluye que, la efectividad de la legislación rusa está relacionada no solo con el logro de los objetivos establecidos por el legislador, el cumplimiento de los objetivos legislativos y los resultados obtenidos, sino también, con el cumplimiento de las leyes con las necesidades del desarrollo social y los intereses públicos. La implementación efectiva del estado de derecho también tiene un componente social destacado. Los principios abstractos del estado de derecho deben estar llenos de contenido social real.

Palabras clave: eficiencia legal; realización del estado de derecho; principios juridicos; realidad social; interes público.

Introduction

The effectiveness of legislation, its regulatory norms and institutions has become the research subject in Russian science, including the scientific works of V.I. Nikitinskii (1971), L.S. Yavich, A.S. Pashkova (1970), V.V. Lapaeva (2011) and other renowned scholars. The issues related to the effective functioning of civil society and the rule of law have also been considered in Russian legal science. The theory of the rule of law and its development were covered by O.K. Ganoev (2011), N.E. Gridchina (2005), V.D. Zorkin (2011), I.V. Leonov (2005), M.N. Marchenko (2014), M.V. Ogneva (2012), O.V. Ralko (2011), F.M. Ryanov (2010), etc.

Scholars also paid attention to specific principles and characteristics of the rule of law, in particular, the principle of mutual responsibility of state and an individual, the legal status and specific rights of an individual in a state governed by the rule of law. The Russian science dwelled on the principle of limiting state power (Gdalevich, 2008), the interaction between

state and its citizens, as well as their participation in the management of public affairs (Yatsenko, 2007).

However, there are still many gaps in the study of the above-mentioned issues. The principles of the rule of law and partially the effectiveness of their implementation were studied in the theses by E.G. Antonova (1996), N.E. Kvacheva (1996) and T.N. Dovbush (2005) published a long time ago. The relevant issues were also mentioned in connection with the study of the legal impact and legal consciousness during different historical periods (Mordovtsev *et al.,* 2017).

At the same time, the effective implementation of these principles, including the purposeful formation of a system of state and social mechanisms, has not been subject to special research in Russian science. In other words, specific theoretical and practical issues related to the effective implementation of the rule of law, including the formation and operation of appropriate mechanisms, as well as many ways to improve the effectiveness of legislation have not been addressed in a separate scientific study.

1. Methods

The research methods are determined by a rather broad subject and include, first of all, logical (definition, description, proof and refutation, classification) and comparative methods to compare features and activities of the phenomena under study. It is also proposed to use the formal-dogmatic method to analyze ways to improve the effectiveness of laws in the area under study.

2. Results

The most important direction in increasing the efficiency of the current legislation is to improve its social aspects. The goals set by the legislator should correspond to the needs of social development and the interests of the general population.

To ensure effectiveness, mechanisms for implementing the rule of law should combine common goals, means, technologies and procedures for such implementation, as well as those entities involved in such implementation.

The mechanisms for the effective implementation of the rule of law should have an unambiguous social orientation, aim not only at the introduction of certain doctrines into the state legislation but at their maximum social adaptation, achieving real social goals using these principles and satisfying

the most urgent needs of social development. This is conditioned by the fact that the theory of the rule of law and the system of its principles exist for society, and not vice versa, i.e. social development should not be controlled even by engaging theoretical ideas.

To ensure effectiveness, the mechanisms for implementing the rule of law under formation should be classified based on several grounds. According to the subjects of implementation, such mechanisms can be subdivided into state and public, whose effectiveness might differ. Public mechanisms should be implemented and are already implemented (although unsystematically) by authorized state bodies of both federal and regional levels.

3. Discussion

In our opinion, mechanisms for implementing the rule of law embrace a set of means, tools and approaches that aim at realizing the relevant principles, as well as state bodies and public associations that directly implement these principles or control their implementation. Accordingly, the better implementation these mechanisms provide, the more effective they are.

The functional dependence of the state and its bodies on society, their subordination to society and their orientation towards social needs should underlie the effectiveness of mechanisms for implementing the rule of law.

The principles of the rule of law and their implementation in the context of ensuring their effectiveness should not contradict the historical needs of developing society or the specifics of its current functioning. If the initial, "classical" separation of powers into legislative, executive and judicial branches leads to constant conflicts between the branches of power and even a crisis of power, then such a model should be transformed by forming other branches or redistributing the powers of the existing branches for their mutual containment and control.

The mechanisms for implementing the rule of law to ensure their effectiveness should include:

- Certain actors (first of all, state bodies and officials, various public associations and social groups, political leaders, etc.). Moreover, their significance and relationship in the implementation of various principles of the rule of law can differ significantly.
- Certain system of means, technologies and tools (methods of legal regulation, information, educational means, etc.).

- Certain established procedures for their implementation (in particular, procedures for holding public discussions of bills, protecting rights and freedoms, procedures for combating abuse of office and other abuses of government bodies to the prejudice of their own citizens, etc).

An important, but only initial stage of ensuring the effective functioning of the above-mentioned mechanisms is to consolidate the relevant principles in laws. Under the Constitution, the activity of the state apparatus is regulated by legal norms of a higher order. This tool "ensures the consolidation and development of the basic principles of the rule of law, the inviolability and impossibility of excluding these principles" (Gasanov, Stremoukhov, 2004).

The mechanisms for implementing the rule of law have the following basic features, which is also important in the context of ensuring the effectiveness of these mechanisms.

1. They aim at achieving a specific goal, namely the implementation of a particular principle recognized as a principle of the rule of law.
2. They include a set of applied means or procedures of a legal, educational, organizational, informational and other nature.
3. They are executed by certain (as a rule, enshrined in legislation) actors. These subjects comprise authorized government bodies and various associations, civil society institutions that might not aim at implementing certain principles of the rule of law as the main goal of their activities.

The mechanisms for implementing the rule of law can be divided and classified on several grounds, which is important in the context of their effectiveness.

According to the subjects of their implementation, such mechanisms should be subdivided into state and public. Authorized bodies of the federal and regional levels are responsible for state mechanisms. Public mechanisms are used by various public associations, social groups or individual citizens. At the same time, an urgent task is to determine the role and correlation of these mechanisms in the effective implementation of specific principles of the rule of law, the consolidation and practical development of various aspects of their interaction.

Depending on the means used, organizational, stimulating, informational and educational mechanisms can be distinguished that have their own specific effectiveness. Unfortunately, the actual form of such mechanisms is not enshrined and has not even been studied in the relevant legal doctrine. Therefore, let us consider this classification in more detail.

Thus, organizational mechanisms should be understood as a set of organizational means and procedures for implementing the principles of legal statehood, as well as bodies and organizations involved in the implementation of these means and procedures. Such bodies do not have to be specially created for the implementation of the rule of law. However, the goals related to the implementation of such principles should be within their competence and, possibly, be enshrined in their constituent documents.

We should also consider organizational procedures for public control over the activities of state bodies and officials, detailed and "transparent" reports of state bodies on their activities and their public discussion, as well as procedures for expressing popular distrust in officials that existed in the Soviet period. Such procedures should ensure the effective implementation of the rule of law.

Informational mechanisms are primarily associated with the formation of information flows that would aim at 1) informing citizens and their associations about the goals and guidelines in the formation of legal statehood; 2) forming such a public opinion that proceeds from the need to build a legal state and implement the rule of law; 3) informing members of society about topical issues related to the formation of legal statehood and the implementation of certain principles of the rule of law.

The relevant procedures are to some extent enshrined in the existing legislation. In this relation, we should mention Federal Law No. 149-FZ "On Information, Information Technologies and Information Protection" (July 27, 2006) which consolidates such significant principles (Article 3) as "freedom of search, obtaining, transmission, production and distribution of information by any legal method; openness of information on the activity of state authorities and local self-government bodies and free access thereto except for the cases established by federal acts". Accordingly, it is possible to draw some conclusions about the compliance of such activities with the effective implementation of the rule of law based on the generalization of the information collected.

Federal Law No. 8-FZ "On Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government" (February 9, 2009) enshrines several principles granting access to information on the activities of state bodies and local self-government bodies that might be used as a means of increasing the effectiveness of informational mechanisms for implementing the rule of law, in particular: limited activities of state power, responsibility of the state to society and individuals, the openness and availability of information on various activities of state bodies and local self-government bodies, except for cases provided by the federal law; the reliability of the information on the activities of state bodies and local self-government bodies; the timely provision of such information, etc.

Now we will briefly describe stimulating mechanisms for implementing the rule of law, including in the context of ensuring the effectiveness of such implementation. Being a system or set of legal and other means, as well as tools and the relevant subjects, these mechanisms aim at encouraging:

1. respect for law, regulations and other elements of the Russian legal system.
2. the formation of an active civil position and active participation of most citizens in various activities to improve the legal system and its components.
3. the activity of citizens connected with the implementation of socially useful, socially-oriented tasks to satisfy public needs protected by law and meet social challenges.
4. activities associated with the complete understanding and implementation of the rule of law in public life.

This mechanism should also provide a set of measures to stimulate those civil servants and civil society associations that would adhere to the rule of law in their activities.

Today it is essential to form an effective educational mechanism for implementing the rule of law. This mechanism can be implemented by both state bodies and civil society associations combined with the system of legal education and the provision of free legal aid. There are already certain models of the relevant measures in the educational sphere. In modern Russia, various activities on patriotic education are quite popular and cover both the federal and regional levels, including the most diverse activities of the relevant state and public structures. Such activities can effectively implement the rule of law.

The criterion for the effectiveness of the rule of law and mechanisms for its implementation in the current Russian legislation should be the adaptation of these mechanisms to modern Russian conditions and needs of the further social development. For the needs of social and state-legal development, it is relevant not only to formally designate or proclaim certain mechanisms but also to determine the main ways of optimizing activities and increasing the efficiency of these mechanisms. These ways can be as follows:

- To improve and increase the effectiveness of the legislation in force both at the federal and regional levels, to define the means used, powers and responsibilities of the relevant subjects, primarily state bodies and officials;
- To improve and increase the efficiency of procedures for using appropriate tools and technologies, as well as promote a broad public discussion and introduce the relevant adjustments;

- To involve active citizens and civil society organizations in activities for the functioning, optimization and enhancement of the effectiveness of these mechanisms.

In relation to the mechanisms for implementing the rule of law, including state mechanisms, it is quite obvious that they should be equipped with the necessary means of coercion to ensure their effectiveness. Indeed, this is correlated with a broader issue covered in the relevant literature, namely the issue of developing optimal models for combining coercion, persuasion and self-organization in social regulation (Magomedrasulov, 2010).

If mechanisms for implementing the rule of law prove to be ineffective in the context of a specific legal system in a certain period, then it will be advisable:

1. To adjust the existing mechanisms, for example, to change their elements or the subjects involved in their implementation;
2. If necessary, to adjust the very content of any implemented principle to adapt it to social conditions and needs, to increase its effectiveness.

Currently, we can present the main forms of improving the mechanisms for implementing the rule of law and increasing their efficiency in the following way:

- To expand their social base and content-oriented social component.
- To strengthen the effective interaction and complementarity of state and public mechanisms.
- To improve and increase the effectiveness of public control over the activities of federal and regional bodies of state power and the functioning of the most important elements of the legal system.

Among various principles of the rule of law, it is necessary to define those the most relevant for the current development of the Russian society and state, as well as to assess the implementation of these principles.

Conclusion

We achieved the initial objective of this study, i.e. highlighted the importance of the social component in ensuring the effectiveness of the existing legislation.

In the context of ensuring legal effectiveness, we defined mechanisms for implementing the rule of law and their main features, considered principles of their functioning and classified such mechanisms.

The efficiency of the current Russian legislation should be increased in several aspects, namely social efficiency, values-based, special legal, psychological, etc. If the existing legislation does not comply with the needs of developing society, it is impossible to ensure the effectiveness of the above-mentioned mechanisms.

The effective principles of the rule of law should be filled with a specific socio-historical content that would correspond to the current conditions in legislation, state policy and law enforcement, including litigation practice. In addition, there is a need for the legislative consolidation of mechanisms and procedures for implementing these principles and their realization in the daily activities of both government bodies and civil society institutions.

For their effectiveness, the mechanisms for implementing the rule of law should not be limited to the use of proper legal means. In the course of such implementation, other tools, technologies and means (organizational, informational, educational, etc.) can and should be widely used to increase efficiency. Therefore, such mechanisms should be interpreted more broadly.

Prospects for further research are associated with identifying specific ways to improve the implementation of 'rule of law' principles in relation to the conditions of modern Russia, as well as regulatory, cultural and other restrictions connected with the effective functioning of such mechanisms.

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The impact of anti-democratic values on the deconsolidation of liberal democracy in Western Europe: an empirical analysis

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Abstract

This article tries to answer the question: "What is happening with liberal democracy: the model collapses or experiences difficulties while adapting to uncertainty?". As the methods of the research the authors of the article have considered international practices of democratic development in the 21st century and revealed reasons for the divergence of institutional orders and cultural practices. This discrepancy is manifested in the deconsolidation of democracy, i.e. there are no guarantees of certain democratic procedures, agreement on political rules, and behavioral patterns. The study aims at revealing the degree of correlation between the deconsolidation of liberal democracy and the effect of institutional and cultural variables. The study is relevant since it provides well-grounded scenarios of regime transformations in different countries, depending on the existing institutional environment based on generalized reciprocity, including reciprocity in the recognition and observance of dominant cultural values and constitutional norms by all actors.

Keywords: political-cultural approach; emancipatory values; institutional order; cultural practices; anti-democratic values.

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El impacto de los valores antidemocráticos en la desconsolidación de la democracia liberal en Europa Occidental: un análisis empírico

Resumen

Este artículo trata de responder a la pregunta: «¿Qué está pasando con la democracia liberal: el modelo se derrumba o experimenta dificultades para adaptarse a la incertidumbre?». Como métodos de investigación, los autores del artículo consideraron las prácticas internacionales de desarrollo democrático en el siglo XXI y revelaron las razones de la divergencia de los órdenes institucionales y las prácticas culturales. Esta discrepancia se manifiesta en la desconsolidación de la democracia, es decir, no hay garantías de ciertos procedimientos democráticos, acuerdo sobre reglas políticas y patrones de comportamiento. El estudio pretende revelar el grado de correlación entre la desconsolidación de la democracia liberal y el efecto de variables institucionales y culturales. El estudio es relevante ya que proporciona escenarios bien fundamentados de transformaciones de régimen en diferentes países, dependiendo del entorno institucional existente basado en la reciprocidad generalizada, incluida la reciprocidad en el reconocimiento y la observancia de los valores culturales dominantes y las normas constitucionales por parte de todos los actores.

Palabras clave: enfoque político-cultural; valores emancipadores; orden institucional; prácticas culturales; valores antidemocráticos.

Introduction

The obvious attractiveness of democracy as a system of government and a type of political relations explains the fact that today most people live in democratic countries (Mironyuk, 2015). Scholars emphasize the merits of the democratic system and its ability to create favorable conditions for human life. Compared to autocracies, democracy promotes economic well-being (Amartya, 2000) and equitable distribution of public goods (Reuveny, Li, 2003); does better at protecting human rights of their citizens (Poe, Tate, Camp Keith, 1999); promotes happiness and life satisfaction (Inglehart et al., 2008; Russett et al., 1993); less inclined towards military resolution of international conflicts; reduces the likelihood of a civil war (Gurr, 2000).

At the beginning of the 21st century, the trend towards a gradual decrease in the world average level of democracy became obvious, which also affected the Western developed economies. According to the Economist Intelligence Unit, a UK company, only eight out of 28 countries did not face a drop in

the quality of democratic institutions between 2006 and 2019 (Table 1). On average, the level of democracy for such countries decreased by 0.26, and equated to 7.99.

Table 1. A drop in the quality of democratic institutions

Country	2006	2019	Fluctuation
Ireland	9.01	9.24	0.23
Estonia	7.74	7.90	0.16
Canada	9.07	9.22	0.15
Latvia	7.37	7.49	0.12
Lithuania	7.43	7.50	0.07
France	8.07	8.12	0.05
Finland	9.25	9.25	0.00
Australia	9.09	9.09	0.00
Spain	8.34	8.29	-0.05
Bulgaria	7.10	7.03	-0.07
Portugal	8.16	8.03	-0.13
Germany	8.82	8.68	-0.14
Italy	7.73	7.52	-0.21
Slovakia	7.40	7.17	-0.23
USA	8.22	7.96	-0.26
Luxembourg	9.10	8.81	-0.29
Denmark	9.52	9.22	-0.30
Austria	8.69	8.29	-0.40
Slovenia	7.96	7.50	-0.46
Croatia	7.04	6.57	-0.47
Czech Republic	8.17	7.69	-0.48
Sweden	9.88	9.39	-0.49
Belgium	8.15	7.64	-0.51

Romania	7.06	6.49	-0.57
Netherlands	9.66	9.01	-0.65
Poland	7.30	6.62	-0.68
Greece	8.13	7.43	-0.70
Hungary	7.53	6.63	-0.90
Average score	8.25	7.99	-0.26

Source: The Economist Intelligence Unit. The EU countries, the USA, Canada, and Australia.

The falling dynamics of democracy indicators are confirmed by the data of Freedom House, Polity IV, and Varieties of Democracy. In addition, other indicators closely related to the functioning of democratic institutions have worsened over the past decade. Thus, all the quality indicators of public administration for the same sample of 28 countries decreased in the period from 2006 to 2018. This contradicts the position of Western science that countries with a consolidated democratic regime cannot experience a state of democratic backsliding.

However, protests in the USA (BLM movement), France ("yellow vests"), the January 6th Attack on the United States Capitol, large-scale protests against coronavirus restrictions in Western Europe have shown that even countries with a developed democratic tradition were unable to provide an effective response to the economic, migration and energy crises triggered by the COVID-19 pandemic. This conditioned deep frustration with the existing democratic institutions. Moreover, the leaders of some Eastern European countries, for example, Hungarian Prime Minister Viktor Orbán, declared that they wanted to "build an illiberal state" (Tóth, 2014). The concept and institutional model of liberal democracy came into conflict with the new reality, which was the reason for statements about the "end of the consolidation paradigm" (Foa, Mounk, 2017a).

1. Causes of the crisis of liberal democracy

- **The institutional approach**

For a long time, the deconsolidation of democracy had remained outside the consideration of Western scholars and poorly studied. At the turn of the 20th and 21st centuries, stable and continuous development associated with democratic institutions and values faced global threats and challenges. These transformed the beneficial effects of exogenous and endogenous factors of the former material well-being of the Western countries.

In the context of growing social diversity supplemented by the information revolution and the migration crisis, democratic institutions were unable to ensure the *systemic integration* of various groups based on the values and norms of *generalized reciprocity*. Such principles as the equality of citizens before the law, the recognition of individual rights and freedoms, and their guarantees by public authorities gradually replaced privileges. At the microenvironment level, the political self-organization and coordination of individuals are based on the norms and values of *specific reciprocity* (ethnic, friendly, group, kin, or clan ties).

There was a gap between formal relations governed by universal rules of law and morality and particular (local) relations, which led to the divergence of the institutional order and cultural patterns. At the beginning of the 21st century, Western science provided extremely controversial assessments. Various factors were considered as reasons for the crisis of liberal democracy, which conditioned different approaches to its interpretation and evaluation.

The crisis of liberal democracy is most evident within the institutional approach. While considering the British model of democracy, E. Grayling concluded that the "failure of democracy" in Great Britain was a consequence of the dysfunction of political institutions (Grayling, 2017). Among the causes of institutional dysfunction, the author mentioned the merger of powers; the dictate of corporate interests; the majority system or the "first-past-the-post" voting; an ideological gap between the elite and the population.

In his opinion, the necessary measures to combat these institutional vices are extremely dubious options, including the introduction of proportional representation and compulsory voting, the separation of the executive and legislative powers. This raises the following questions: "Why did the institutional order that has been ensuring the effective functioning of British democracy for a long time suddenly become dysfunctional?" and "What is the likelihood that a change in the institutional structure can overcome the crisis of the democratic system if even co-social democracies with proportional representation and separation of powers have not been able to avoid it?".

The thesis that the crisis of Western democracies resulted from the dysfunction of institutions was mentioned by S. Levitsky and D. Ziblatt (2018). The emphasis is placed on the modern Western political elite that proved to be unable to construct a democratic agenda and support democratic norms. According to S. Levitsky and D. Ziblatt, the signs of an impending authoritarian setback comprise the heterogeneity of the elite.

Its structure includes the following types of politicians: those who deny in word or by action democratic rules of the game; those who doubt the

legitimacy of their opponents; those who encourage violence as a method of political struggle; those who encroach on the rights and freedoms of their opponents, including mass media. In their opinion, the crisis of elites was manifested in the following forms: Brexit, the election of D. Trump as President of the United States, and the right-wing populism across continental Europe. In general, S. Levitsky and D. Ziblatt blamed the crisis of democracy on modern Western political elites. The authoritarian trend within the ruling class expressed itself in the governance of radical right-wing leaders (the leader of the Austrian People's Party, S. Kurz) and the growing influence of neo-nationalists. Thus, the nationalist party "Alternative for Germany" (ADG) became the third parliamentary faction in the German Bundestag in 2017.

- **The political and cultural approach**

Under the political and cultural approach, the crisis of liberal democracy is associated with the growth of anti-democratic values among the population of Western countries. For example, S. Foa and J. Munch explained the ineffectiveness of formal institutions of liberal democracy by generational shifts that form new priorities.

The political system causes discontent among young people since it does not create social elevators and cannot integrate its potential into social creation (Foa, Mounk, 2017b). The decline of liberal democracy was mainly influenced by the growth of authoritarian views among the youth. The authoritarian cultural transformation was caused by a drop in living standards, an increase in social inequality, and, as a result, widespread populism, the rise to power of neo-Nazis in some Western European countries, Brexit, and the election of D. Trump as President of the United States.

Not all scholars agree with the pessimistic conclusions of S. Foa and J. Munch, some of them differently assess the values of young people in Western countries (Zilinsky, 2019). For instance, the British Pippa Norris highlights the illogical judgments of S. Foa and J. Munch (Norris, 2017).

If growing dissatisfaction with the democratic system among the younger generation causes the erosion of democratic institutions, how to explain the fact that the supporters of Brexit and D. Trump were mainly senior people? In turn, Pippa Norris provided a different assessment of the erosion of democratic institutions. She believed that fluctuations in the indicators of loyalty to democratic institutions in Western countries were insignificant, in contrast to the indicators of some countries in Eastern Europe.

The Dutch political scientist Eric Voeten supported this opinion and associated growing dissatisfaction with the democratic system and declining trust in democratic institutions with increased demands of citizens and wishes for their own political system (Voeten, 2016).

Such German scientists as E. Alexander and C. Welzel did not see any signs of declining democracy in Western developed economies (Alexander, Welzel, 2017). In their opinion, the slight decline in the indicators of democracy is temporary and is due to a constantly growing value gap between different generations and social classes. Most young people have pro-democratic and pro-liberal views, while the older generation professes anti-democratic and anti-liberal attitudes.

The methodology for measuring the internalization of anti-democratic values used by S. Foa and J. Munch also gives rise to doubt. R. Inglehart who studied cultural values in 80 countries believed that citizens' commitment to democracy or their inclination to anti-democratic tendencies, such as the desire to have a strong leader, could not be regarded as harbingers of democratic governance.

It is paradoxical but the population of some autocracies has an extremely positive attitude to democracy and, nevertheless, continues to live in an autocratic environment (Inglehart, 2016). According to *the World Values Survey Wave 6*, the population of authoritarian states often (Egypt – 98.7%; Zimbabwe – 96.8%; Ghana – 95.6%) is much more supportive of democracy than the population of some democratic countries (Netherlands – 80.6%; USA – 79.7%; New Zealand – 77%). Nevertheless, most citizens of authoritarian countries do not like the concept of democracy since there is no direct relationship between democratic governance and the real life of the population.

The deconsolidation of democracy in Western countries is interpreted in different ways, and methods of its analysis are not fully developed. As a result, the statements and conclusions of different authors are sometimes directly opposite. There is no consensus on how to fix those values that influence the functioning of institutions.

In addition, no empirical studies prove the connection between anti-democratic values and the deconsolidation of democracy in developed Western countries. To understand the nature of destructive processes occurring in Western democracies, it is necessary to conceptualize the discourse of "democratic deconsolidation", form its theoretical model, and identify its driving forces.

- **The deconsolidation of democracy**

The consolidation of democracy is among the key discourses in the theory of democracy. Since its introduction into science (Linz, Stepan, 1996), various authors have been trying to determine criteria for the consolidation of a democratic institutional order.

Democratic consolidation is understood as the process of rooting democratic values and attitudes in the minds of individuals, which clarifies

the implementation of the roles and functions of institutions and increases the predictability of decisions based on competition-cooperation relations.

Markers of consolidation quantification are as follows: the internalization of democratic norms by various groups of elites (Linz, Stepan, 1996), the role of civil society organizations in the political process (Paxton, 2002), the distribution of post-material (Inglehart, 1997) or emancipative (Welzel, 2013) values in society, etc.

Despite different approaches, the common thing that unites all the authors is that the effective functioning of democratic institutions is possible only if there are indispensable conditions. Their sufficiency excludes the subsequent erosion of institutions and the possible deconsolidation of liberal democracies.

The hypothesis about the relationship between the deconsolidation of democracy and the growth of anti-democratic values requires a theoretical reflection on the "democracy" term that has no clear definition in modern political science. To distinguish between democracies and non-democracies, we used the matrix of R. Dahl who understood it as a political regime that meets two criteria: a) fair, competitive, and inclusive elections; b) the observance of civil and political rights (Dahl, 2010).

R. Dahl called all the regimes that meet procedural and civil-legal criteria "polyarchies" or democracies. Thus, liberal democracy is a political regime, whose functioning is based on the fair, competitive, and inclusive elections of government bodies that guarantee the observance of civil and political rights of individuals.

Modern democracies ensure the integration of society thanks to the institutional order based on: the separation of powers and the system of checks and balances, free and fair elections, inclusive suffrage, the rule of law, the freedom of opinion, alternative sources of information, the protection of minority rights, etc. Some scholars call these institutions inclusive (Acemoglu, Robinson, 2012), while the others refer to them as an "open access order" (North, Wallis, Weingast, 2009).

The functioning of democratic institutions is ensured by a set of dispositions conditioned by values and cultural norms of generalized reciprocity. Culture usually embraces the values and beliefs of various ethnic, religious, or social groups passed down from generation to generation in a relatively unchanged form (Alesina, Giuliano, 2015).

Within the political-cultural approach, any consolidated political regime is the result of a balance between cultural patterns and institutional practices at the current moment (Almond, Verba, 1963). The divergence of cultural patterns and institutional practices leads to the deconsolidation of any regime. It is worth mentioning that deconsolidation is a process, not a result of certain changes within the political system.

Many scholars associate the deconsolidation of democracy with the first signs of institutional anomalies that do not fit into a common worldview, including the election of D. Trump as the President of the United States or the voting on Britain's withdrawal from the EU (Grayling, 2017).

One can hardly agree with this statement since institutional practices reflect the content of dominant values and cultural norms. For this reason, the analysis of democratic deconsolidation should focus not on certain institutional practices but on cultural values and norms. The latter stipulate the political self-organization of social groups.

The balance of any regime should be viewed as the interaction of cultural patterns and institutional practices. Based on this rule, the main driver of democratic deconsolidation is the divergence of cultural patterns and institutional practices, between which the balance is upset. Institutional practices are all forms of political communication within the framework of the existing political institutions. Cultural patterns represent the dominant political values and dispositions that develop sustainable behavior.

At the initial stage, developed democracies are characterized by the democratic equilibrium of their cultural patterns and institutional practices, which ensures the consolidation of any regime and its stability. At a certain stage of their development, cultural patterns are influenced by various factors and begin to change, which upsets the initial balance.

The consequence is the deconsolidation of the regime. In this pair, cultural patterns serve as the independent variable, and institutional practices are the dependent variable. Due to changes in cultural patterns, institutional practices also transform. This concept complies with the main provisions of G. Eckstein's congruence theory.

To maintain the stability of a political system, "the patterns of power that characterize the political system of some country should be compatible with the prevailing beliefs about power among the population" (Eckstein, 1997).

Thus, cultural patterns and institutional practices are two basic variables, whose interaction determines the transition from the previous regime equilibrium to a new state. Furthermore, deconsolidation is regarded as a temporary process since the adaptation of institutional practices to the changed cultural patterns creates a new regime equilibrium.

The theoretical matrix of the subsequent analysis of flexible interaction between institutional practices and changing cultural patterns can be presented in the following combinations: the *balance* of cultural patterns and institutional practices – *divergence* of cultural patterns and institutional practices – *deconsolidation* of cultural patterns and institutional practices – *convergence* of cultural patterns and institutional practices – *new equilibrium* of cultural patterns and institutional practices.

The above-mentioned model can be used for describing regime transformations of liberal democracies and consolidated autocracies that differ only in the transformation of cultural patterns. The expansion of democratic cultural patterns in autocracies leads to the deconsolidation of the regime, an increase in the level of democracy, and quality improvement of democratic institutions in an indefinite continuum.

The deconsolidation of democracy caused by a change in cultural patterns in favor of authoritarian values is manifested in democratic backsliding and decline in the effective functioning of democratic institutions. A state in which there is a significant gap between cultural patterns and institutional practices can last for a limited time. The existence of a stable authoritarian or democratic equilibrium is possible even if cultural patterns and institutions are not congruent. This state can be caused by the actions of leaders or elites, as well as institutional inertia.

In this case, the duration of such a delicate balance is severely limited. For example, there are demonstrations in support of the presidency of Donald Trump and against the results of the 2020 U.S. presidential election, followed by the January 6th Attack on the United States Capitol. Then discontent reached its peak and began to decline thanks to the socially-oriented actions of J. Biden's administration. The balance was restored.

- **The specific measurement of parameters and inductors used in the model**

To indicate democratic institutional practices, we will use the EIU Democracy Index. It includes four parameters: electoral process and pluralism, civil liberties, government functioning, political participation, and political culture. Until the early 21st century, it had been difficult to evaluate cultural patterns of democracy due to the lack of big data databases and cross-national research in the field of culture.

The main manifestation of anti-democratic values is the feeling of *hostility* to the democratic political system and its institutions, which can be assessed through four indicators:

1. *skepticism* – disbelief in the ability of democratic institutions to effectively solve the existing problems, challenging the advantages and merits of democratic political systems.
2. *optionality* – acceptance and approval of non-democratic alternatives, the need for a strong leader to achieve stability and order.
3. *procedurality* – a negative attitude towards democratic procedures: free elections, the alternation of power, the desire to achieve a practical result despite procedures.

4. *conformism* – a disdain for the freedom of thought and speech, a tendency to obey the imposed political will.

- **The impact of anti-democratic values on the development of liberal-democratic regimes**

Some Western countries, whose political regime can be regarded as liberal-democratic, experience an increase in the level of anti-democratic values. However, it is not a universal but rather a local phenomenon, i.e. many Western liberal democracies demonstrate a decline in the level of anti-democratic values, including Great Britain, whose problems have been actively discussed (Grayling, 2017).

In addition, the intensity of this process remains rather moderate, namely, a sharp increase in anti-democratic values is observed only in a few countries, including Greece, Hungary, Poland, and Romania. It is worth mentioning that none of these countries has a long experience of democratic governance so the cases of Hungary, Poland, and Romania can be viewed in the context of a failed or incomplete democratic transition rather than the deconsolidation of democracy. The case of Greece has a quite logical explanation in the form of economic problems associated with the debt crisis and solving problems of a purely economic nature. After that, the Greek cultural patterns will return to their previous state. In any case, more empirical data is required for a better understanding of the ongoing processes. Open access to the data of the seventh wave of the World Values Survey in July 2020 shed light on the current changes.

Due to such findings, alarmist claims about the widespread and inexplicable decline of liberal democracy in the Western countries seem exaggerated (Foa, Mounk, 2017). These conclusions are consistent with the results of other studies analyzing cultural transformations in Western countries (Alexander, Welzel, 2017).

Conclusion

Authors conclude thst, the reason for concerns about the impending triumph of authoritarianism is that one of the most influential Western countries, the United States, is showing negative dynamics in terms of democratic development. Nevertheless, the United States represents only a part of the Western world, albeit a crucial one, and it does not mean that all countries have the same problems.

Thus, we distinguish between two clusters of countries that differ in the intensity of anti-democratic values:

1. Countries with a rapid increase in anti-democratic values (Greece, Hungary, Poland, Romania);
2. Countries with a moderate increase in anti-democratic values (USA, Austria, Czech Republic, Belgium, Slovakia, Spain, Sweden).

On the contrary, the other countries demonstrate a decline in the level of anti-democratic values, which shows no signs of democratic deconsolidation.

Anti-democratic values have a statistically significant relationship with the level of democracy, while cultural patterns are associated with institutional practices and determine their specifics.

For our future research with the aim of better understanding the deconsolidation of democracy in Western countries, it is necessary to find out how their cultural patterns have changed in recent years. Consequently, it will be possible to answer the question: "Do Western countries go through the process of deconsolidation and, if they do, how it is manifested and what impact does it have?".

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USSR policy of 1920 in relation to people forced to emigrate to Asian countries after the end of the civil war of 1917-1922

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Abstract

It examines the military activities of white emigration in China, especially in Manchuria, evaluates attempts to influence the situation in the neighboring regions of the Soviet Union in the 1920s, and further characterizes the reaction of the Soviet authorities. General scientific methods (analysis, synthesis) and general historical (historical-genetic, historical-comparative; problem-based and chronological, historical-systemic) are used. The authors dwell on the background and reconstruction of the general context of the facts. Vivid and extensive quotations from various witnesses are provided. By way of conclusion, the hypothesis of the study is confirmed that the influence of white emigration on the life of the Soviet population, which is undesirable for the Soviet authorities, is eliminated by a combination of measures of force and propaganda: the creation of borders, troops, campaigns, and the assassination of emigrated leaders. The actions of the paramilitary units of the White emigration hinder the life of the local population and are neutralized thanks to the policy of the Soviet authorities.

Keywords: Soviet Russia; China; Manchuria; Harbin; Russian Military Union (RAMU).

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Política de la URSS de 1920 en relación con las personas forzadas a emigrar a países asiáticos después del final de la guerra civil de 1917-1922

Resumen

Se examinan las actividades militares de la emigración blanca en China, especialmente en Manchuria, evalúan los intentos de influir en la situación en las regiones vecinas de la Unión Soviética en la década de 1920 y, además, caracterizan la reacción de las autoridades soviéticas. Se utilizan métodos científicos generales (análisis, síntesis) e históricos generales (histórico-genético, histórico-comparativo; basado en problemas y cronológico, histórico-sistémico). Los autores se detienen en el trasfondo y la reconstrucción del contexto general de los hechos. Se proporcionan citas vívidas y extensas de varios testigos. A modo de conclusión se confirma la hipótesis del estudio de que la influencia de la emigración blanca en la vida de la población soviética, que es indeseable para las autoridades soviéticas, se elimina mediante una combinación de medidas de fuerza y propaganda: la creación de fronteras, tropas, campañas y el asesinato de líderes emigrados. Las acciones de las unidades paramilitares de la emigración Blanca dificultan la vida de la población local y son neutralizadas gracias a la política de las autoridades soviéticas.

Palabras clave: Rusia Soviética; China; Manchuria; Harbin; Unión Militar Rusa (RAMU).

Introduction

The relevance of the topic of the study is determined by the need for further research into the Russian emigration of the 20th century as a phenomenon of not only Russian but also world history. An integral part of this phenomenon is the history of the Russian White emigration over 1921–1929, in particular in China, where one of the centers of the ideological and political development of the White emigrants was located.

As a result of the events of the civil war, in total, more than two million people left Russia for other countries (Goldin, 2007). Politically, the Russian emigration was a rather complex conglomeration of forces and movements – from radical monarchists to Mensheviks and Socialist-Revolutionaries. In general, it was a powerful and ideologically motivated force that still hoped for the implementation of plans to resume hostilities with Soviet Russia (Baksheev *et al.*, 2021b).

The greatest danger to the latter was posed by the Russian officers and their organizations abroad. In his works, the leader of the Soviet state V.I. Lenin wrote that White Guard organizations were actively working to try and create military units and, under favorable conditions, invade Soviet Russia (Shkarenkov, 1986).

The analysis of the formation and activity of Russian emigration in China in the 1920s carried out in several studies (Ablazhei, 2007; Goverdovskaya, 2004; Melikhov, 2003; Pisarevskaya, 2002; Revyakina, 2002) allows one to contribute to the further scientific development of many aspects in the history of international socio-political processes, as well as to the study of Russian-Chinese relations in the first half of the 20th century.

At the same time, some issues related to this topic, in our opinion, have not been sufficiently developed in historiography. First, this refers to the features of the White emigration in China, the struggle of its military faction with Soviet Russia, as well as the measures taken by the authorities of Soviet Russia outside Soviet territory. It seems to us that the study of the influence of White emigration in the 1920s is one of the tasks of modern historical science.

The scientific novelty of the article is determined by the study of the general and special features that the life of the white emigration had in various regions of China; analysis of the problems that existed in the protection of the state border of the Far East and Eastern Siberia at the time as well as an analysis of the set of measures adopted by the Soviet authorities.

The hypothesis of the study: the influence of the White emigration on the life of the Soviet population in the 1920s that was undesirable for the Soviet authorities was eliminated by a wide range of force and propaganda measures: the creation of border troops, campaigns, and the murder of emigration leaders.

1. Methods

In the study, we used a set of general scientific (analysis, synthesis) and general historical (historical-genetic, historical-comparative; problem-based and chronological, historical-systemic) methods.

The use of methods of analysis and synthesis made it possible to identify the features of the status of White emigrants in China and to show their influence on the Soviet Far East and Eastern Siberia in the 1920s.

The historical-genetic method made it possible to recreate a comprehensive image of the features of the White emigration in China.

Through the historical-comparative method, we showed the general and specific features of the life of the White emigration in various regions of China. At the same time, the activities of the paramilitary units of the White emigration are presented in the context of a real historical process, determined by the features of goal setting.

Using the problem-based and chronological method, we identified the corresponding problems with the protection of the state border of the Far East and Eastern Siberia at that time.

The historical-systemic method, as one of the fundamental methods of historical research, made it possible to consider a set of measures by the authorities of Soviet Russia, which were taken outside the Soviet territory to normalize the peaceful life of Soviet citizens in the region.

2. Results

- **Features of White emigration in China**

The first Russian emigrants in China were officials of the Russian diplomatic corps who did not agree to follow the instructions of the Soviet government "based on the platform of the Second All-Russian Congress" as noted in the order of the People's Commissariat for Foreign Affairs (NKID) dated 26 Nov. 1917 (Shkarenkov, 1986). Among them were ambassadors to Japan V.N. Krupensky, and China N.A. Kudashev, the consul in Harbin, Prince D.V. Meshchersky, and many others. In addition, the following remained in Manchuria: the headquarters, part of the officers, and lower ranks of the Zaamursky district of the border guard and the board of the Chinese Eastern Railway (CER) (Ablova, 2007). During the Civil War, Ataman I.M. Gamov's Amur Cossacks temporarily hid in China in spring 1918, and in February 1920 so did Ataman I.M. Kalmykov's Ussuri Cossacks.

The emigrant community in China was mainly reinforced by the military personnel of the defeated White armies, their families, and civilian refugees:

- In May 1920, the separate Semirechensk army of the ataman B.V. Annenkova.
- In November 1920, a small part of the "Kappelevtsy" (White members of the military who assumed the informal patronage of the deceased General V.O. Kappel) and "Semenovtsy" (members of the White units previously deployed in Transbaikalia, headed by Ataman G.M. Semenov).
- In October 1922, the zemstvo army of General M.K. Diterikhs (this is the rest of the former "Kappelevtsy" and "Semenovtsy").

There are still discrepancies in the assessment of the number of Russians who ended up in China at that time. According to official data, in the 1920s only in Manchuria, there were more than 100 thousand people who arrived from Russia. According to other sources, 450 thousand Russians lived here. Although a lot of people arrived there even before the 1905 revolution and lived in the exclusion zone of the CER (Ivanov, 2003).

The Far Eastern White emigration shared the global fate of the entire White emigration with a significant difference: the first months in the refugee camps were particularly terrible. In the spring of 1920, White émigré camps appeared in Northern China (the current Xinjiang Uygur Autonomous Region), where soldiers, Cossacks (Kuraev *et al.*, 2019), officers, refugees lived, and lieutenant general A.I. Dutov took command over them. The total number of the population of the camps is unknown because the Soviet leadership was more worried about Dutov's six-thousand detachment in Suidong. On 7 Feb. 1921, A.I. Dutov was killed by agents of the All-Russian Extraordinary Commission (Usov, 2002).

In the spring of 1921 famine broke out in the camps and reached catastrophic proportions. People died every day, the corpses of the dead were not removed for weeks, a huge number of sick and poor people appeared, robberies became commonplace. A similar situation occurred in most refugee camps in northern China (Aurilene, 2008), the only exception being the end of the camp near Chuguchak. On 24 May 1921, units of the Red Army crossed the border, captured most of those who were in this camp, and transported them to Soviet territory. Such a development of events was only possible in a civil war. Only professional soldiers managed to avoid deportation to their homeland, command over which was assumed by Lieutenant General A.S. Bakich (executed in May 1922 after the defeat of the expedition of Lieutenant-General von Ungern-Sternberg) (Pisarevskaya, 2002).

The same could be seen not only in North China but also in Shanghai. In his memoirs, the Soviet diplomat M.I. Kazanin described the Russian Shanghai colony with Bolshevik gloating and prejudice.

What awaited Russian women in the future? To live today so that the owner of the boarding house, who has not been paid for three months already, does not throw you into the street – this is the immediate goal. Then... work in bars and dance halls as paid partners for drunk sailors who came to dance – and, in the end, selling themselves by the hour in specialized institutions. Their future is a hospital and a morgue. It was no better for men.

The poor died quickly. Those who owned some valuables tried to trade, although they usually did not know how to, those who were physically stronger were hired by the British police, or as security guards for the rich

Chinese competing with the Sikh Indians or became strikebreakers when the Chinese workers went on strike. Some went into military service with Chinese generals and died even faster than women (Ivanov, 2003).

The comments of the Soviet official were partly confirmed by Colonel L.I. Shtin, who served in the detachment of General K.P. Nechaev subordinate to the ruler of northeastern China Zhang Zuolin. In 1925, there were 4,000 people in the detachment (infantry, cavalry, artillery). In his memoirs, the Colonel increasingly asks himself the question: "We are fighting, we are suffering losses, our people are dying – for whom and for what?" The officers' pessimism was confirmed by the assessment of General A.S. Lukomsky, who noted that in two and a half years, only Nechaev's detachment lost more than 1,000 people in the battles of the civil war in China (Balmasov, 2007).

However, there were also oases of former life in China – Harbin and the Three- River area. The Three-River area is a special geographic region in the northwestern part of Manchuria (basin of the Argun River), where Cossacks settled on numerous farms. According to Japanese data, at the beginning of the 1930s, there were more than 20 farmsteads, from 10 to more than 100 households in each (55 thousand Russians). However, the Japanese probably underestimated the Russian population of the Three-River area, from which they recruited fighters for the White Guard units (Klyaus, 2015).

Harbin, a city built with Russian funds at the end of the 19th century, became the center of the White emigration for many years. The city had a Russian administration, two dozen Orthodox churches, a polytechnic institute, and a commercial school. Trade was controlled by the merchant Churin, restaurants and cafes were controlled by the Georgian Gamarteli, and Russian performances were staged in theaters (Kapran, 2011).

The emigrant poets called Harbin the Far Eastern Paris. The poet Arseny Nesmelov (A.I. Mitropolsky) performed in the salons, F.I. Chaliapin gave concerts, V.L. Durov performed in the circus. Fourteen Russian-language newspapers and 82 magazines, streets and urban areas retained their Russian names (Kapran, 2011).

In 1940, the former Irkutsk citizen I.I. Serebrennikov, a historian and publicist, wrote: "emigration brought many intellectual forces with it to Harbin. Never during its existence has Harbin seen such a large number of the highly qualified intelligentsia" (Varaksina, 1999: 30).

However, if Harbin resembled Novocherkassk or Rostov-on-Don, then in the provincial cities of Manchuria, a real swamp of Atamanism formed, where people not so much drank too much Chinese vodka – "the prude" (baijiu), as smoked opium, and the Chinese treated Russian emigrants as criminals (Lin, 2001).

Soviet workers of the CER and those who had business trips to China were unpleasantly surprised and shocked to find themselves in Manchuria. Here is what the future general and hero of the defense of Stalingrad V.I. Chuikov (1979) wrote on his experience:

Having crossed the border, I did not immediately feel that it was no longer Russian land under the wheels... But soon, looking out the window during a train stop, I realized that we were in a different world. Life seemed to have frozen there, stopped and in a moment, we went several years into the past. Russian officers walked along the platforms in military uniform with stars. The Chinese authorities involved them in guarding the road... Careful preservation of uniforms and personal weapons... The uniform is stale... The look is wary and hostile....

Chuikov described Harbin as a trade, economic and political cell of Manchuria, and at the same time a cell of smuggling and espionage.

The whole city is a black market. Everything here was a commodity. If something is unavailable, they will get it from any part of the globe. Harbin is a city of contrasts: on the one hand, there are rich people, on the other, there are many beggars. The city was invaded by the elements of the black market, police terror, a wave White Guards (Chuikov, 1979).

The existence of those who could get a job at the CER was relatively prosperous because the economic crisis of the 1920s, which also hurt Russian enterprises in China, was accompanied by massive unemployment. The factories stopped working, instead of wheat they grew poppy which the Chinese processed into opium (Melikhov, 2003).

- **The fight of the White emigration with Soviet Russia in the Far East and Eastern Siberia**

On 1 Sep. 1924 following order No. 35 of General P.N. Wrangel, the Russian All-Military Union (RAMU) was created in Sremski Karlovci (Serbia), designed to unite all the officers of the former White Army abroad and preserve the military organization (Goldin, 2007). Members of the armies of A.V. Kolchak, N.N. Yudenich and others were also allowed to join. General management was carried out by General Wrangel's headquarters.

RAMU included those who remained faithful to the ideas of the White Cause, and its main task was to retain personnel for the creation of a new Russian army in the future. At the decisive moment, this army was supposed to be mobilized for a new war against Bolshevism, where it was to become an important military and political factor.

RAMU consisted of six departments, which were divided geographically: Department I included military emigrants from France and England, Department II – in Germany, Department III – in Bulgaria, IV – in Yugoslavia, V in Belgium, VI – in Czechoslovakia. By the end of the 1920s,

there were about 100 thousand people in RAMU. Over time, not only white emigrants who lived in Europe, but also in Asia, South, and North America, began to join RAMU (Goldin, 2007).

Thus, in 1928, the Far Eastern Department of RAMU was created, its organizations were in Dairen, Mukden, Harbin, Tianjin, and Shanghai (Ivanov, 2003).

The department was headed by generals M.V. Chanżyn, and later M.K. Diterikhs. The chairman of the Russian emigration in the Far East was General D.L. Horvat, a former CER manager who established excellent relations with old China, with the diplomatic corps, and united Far Eastern emigrants (which no one else in Europe succeeded in) to fight Bolshevism. This fight began with the purging of its own ranks and the suppression of attempts to return to the USSR in connection with the decree of the Central Executive Committee and the Council of People's Commissars dated 9 Jun. 1924 on amnesty for all privates of the White armies stationed in the Far East, Mongolia, and western China (Dubaev, 2002). The most notorious episode was the murder of D.N. Chernyavsky, the editor of the "Smenovekhovtsy" newspaper "Novosti Zhizni".

RAMU members were engaged in intelligence in the border regions of the USSR. Armed detachments of White émigrés repeatedly crossed the state border to carry out sabotage raids: "gangs familiar with the area were based on Chinese territory and, with support on Soviet territory, carried out attacks on the local population…" (Krotova, 2014: 69).

However, it should be noted that, despite all the efforts and funds that were invested in the activities of the militarized White émigré groups, the goal that was set for them was not achieved (Baksheev et al., 2021a). Judging by the documents, a lot of emigration efforts were dedicated to organizing an uprising in the Far East and Eastern Siberia to separate these territories from the USSR. However, with the exception of the uprising in the Amur region in 1924, the goal was not achieved. Moreover, in 1927 only six families left this area, motivating their decision with attacks from abroad (Sviridenko and Ershov, 2000). This dealt another blow to the counter-revolutionary underground as people were tired of the war and wanted to work in peace, not fight.

- **Operations of the Soviet border troops**

The active actions of the radical representatives of the White emigration in the border regions of the Far East and Eastern Siberia were facilitated by the lack of development of the state border, which was rooted in the times of the Russian Empire. This can be explained by the substantial length of the border in an underpopulated region; the absence until 1917 of the units of a separate Border Guard Corps of the Russian Empire on the Far Eastern border and the impossibility of recruiting civilians for the border corps;

the interest of the local population in the development of the smuggling industry.

The land border with China was four thousand miles long. Moreover, the region was sparsely populated: about 1.7 million people lived in an area of more than three million square kilometers, which averaged 1.1 people per one km², while in the European part of the country there were 30 people per one km².

As a result of studies of the Russian-Chinese border, back in tsarist Russia, a project was developed for the establishment of a border guard in Eastern Siberia. The project provided for the creation of border control posts, the construction of patrol roads, and other activities. The total number of guards was to increase to four thousand people (based on the calculation of one border guard per one verst). The main problem for the border guards was smuggling since after the closure of the Far Eastern "free port" (duty-free import of foreign goods) in 1907, it was not possible to stop the flow of smuggled goods. The fact is that for most residents, who lived mainly at the expense of crafts, smuggling was the most important aspect of unofficial income (Plekhanov and Plekhanov, 2003).

Undoubtedly, the civil war inflicted great harm on the border guards of the Far East and Eastern Siberia. One cannot ignore the fact that the troops of the interventionists (especially the Japanese) did everything possible to destroy the infrastructure and material base of the border troops.

Four years of civil war helped to strengthen the position of smugglers in the area. That is why the Soviet border troops had to start guarding the state border almost from square one. While their opponents were professional military men. The border troops located along the border in small groups, without constant communication, were in very difficult conditions (Buyakov and Shinin, 2013). In the Far East and Eastern Siberia, similar work continued with varying degrees of intensity until 1939 (the defeat of the Japanese armed forces on the Khalkhin-Gol River).

The following figures testify to the efficiency of the Far Eastern border guards: from 1925 to 1935, 31,092 violators of the state border, 384 spies, 37 saboteurs, 216 bandits, and 9,679 smugglers were detained (Gladkikh, 2010). The number of violators, terrorists, and White bandits killed in this case cannot be counted, because, according to the commandant of the Iman commandant's office: "the main task of the border guards was not to throw the gang back into the adjacent territory, but to completely destroy it. To strike them off the centralized register, so to say" (Gladkikh, 2010: 20).

The activities of the border guards gave their results during the constant military conflicts and provocations of the 1920s, among which the most notorious were the military actions in 1929 at the CER (with China).

Regular units of the Red Army provided significant assistance to the border guards. In July 1924, the 18th Rifle Corps headquarters in Chita (later transferred to Irkutsk) and the 19th Rifle Corps headquarters in Khabarovsk were formed as part of the Siberian Military District.

The 18th Rifle Corps consisted of:

- 35th Siberian Rifle Division, stationed in Irkutsk.
- 36th Transbaikal Rifle Division in Chita.
- 5th separate Kuban Cavalry Brigade in the village of Berezovka (now Divisional near Ulan-Ude) (since 1927, the brigade's headquarters at Dauria station).
- since 1926, the Buryat-Mongolian cavalry squadron (since 1 Oct. 1927, a separate Buryat-Mongolian cavalry division) – the village of Berezovka.

The 19th Rifle Corps included:

- 1st Pacific Rifle Division in Vladivostok.
- 2nd Priamurskaya Rifle Division in Khabarovsk.
- 9th separate Far Eastern Cavalry Brigade in Nikolsk-Ussuriysky (Baksheev, 2020).

Discussion

Despite constant tension along the Soviet-Chinese border, in the conditions of an undeclared war with shots not only across the border but also military operations on Soviet territory, the intensive development of the Far East and Eastern Siberia region continued (Baksheev *et al.,* 2020).

To ensure a peaceful life for Soviet citizens in the region, in addition to the actions of the border guards, the Soviet government and its defense and law enforcement agencies implemented a set of measures that were carried out on the other side of the Soviet border. The actions that were carried out by Soviet workers can be divided into the following components:

- campaigning and propaganda work among emigrant organizations since November 1922. Thanks to this activity, already in March 1923, 1,200 officers and soldiers stationed in Jilin (Manchuria) abandoned active military operations against the USSR, and 900 people left this anti-Soviet organization. There were no more than 500 people left in the White Guard organization of the interim Amur government of General I.F. Shilnikov, 3,000 people left the Genzan organization (Korea), etc. Moreover, the actions of Soviet workers contributed to the return home of the former

White Guards. Thus, at the beginning of 1923, four echelons with former members of the White Army crossed the state border. We believe that in subsequent years, the return from emigration was also facilitated by the results of the trial which took place in Chita over General A.N. Pepelyaev and his associates, who were taken prisoner in June 1923 during the Okhotsk-Ayan expedition led by S.S. Vostretsov. Contrary to Pepelyaev's pessimistic forecasts, the General and 65 others were sentenced not to execution but to ten-year imprisonment, 11 people to five years, and the Yakut Filippov to five years' probation (Ablazhei and Komissarova, 2007).

- Large-scale military actions in China: the capture of residents of the Chuguchak camp in May 1921; actions of "unknown" guerilla detachments in the Three-River area, etc. (Buyakov and Shinin, 2013).
- The physical destruction of key figures of the Far Eastern emigration, an example of which was the murder of Lieutenant General A.I. Dutov and the organization of the extradition of Lieutenant General B.V. Annenkov by the Chinese (1926) (Buyakov and Shinin, 2013).

Conclusion

The White emigration in Manchuria played an active role in attempts to destabilize the situation in the east of the USSR. At the same time, after the end of the civil war in 1922, for the first time in the entire period of the development of the Far East and Eastern Siberia, a border factor arose which included murders, terror, and attacks by armed detachments on Soviet territory, in which Russian emigrants also actively participated. However, the military raids of the White emigration that made the life of the local population harder were eliminated thanks to the policy of the Soviet authorities.

Thus, the hypothesis of the study was confirmed.

An analysis of the creation of fascist political organizations in Manchuria by White military emigration, their cooperation with the Japanese occupation authorities in the struggle against Soviet Russia after the Japanese occupation of Manchuria in 1931 may become a prospect for further research.

Certain limitations of the study include the lack of analysis of archival documents when writing this article, as such documents were not available to the authors due to restrictions on access to archives.

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Abuse of the right by civil servants in the aspect of the basis of criminal liability

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Abstract

The objective of the article was to examine the problems associated with the search for theoretical foundations for the legal-criminal assessment of the abuse of the law by official representatives of the State. It is divided into two situations: (a) an evaluation of the actions of public servants who consistently embody the illegitimate and illegal policy of the State; b) an evaluation of the actions of state representatives under conditions where such actions diverge from the content of the state's legal policy. When the criminal conduct of public servants is a continuation of the «criminal policy» of the State, their responsibility cannot be based entirely on the concept of abuse of rights. The authors used the comparison method as the main method of the research. In conclusion, they distinguish the application of illegal laws and the illegal application of laws. If in the first case it is not possible to establish signs of abuse of the right, then in the second case it is quite possible scientifically speaking, which is essential for the qualification of the actions of the perpetrators.

Keywords: constitutionalization of criminal law; responsibility of public officials; state responsibility; abuse of the law; official crime.

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Abuso del derecho por parte de los funcionarios públicos en el aspecto de la base de la responsabilidad penal

Resumen

El objetivo del artículo fue examinar los problemas asociados a la búsqueda de fundamentos teóricos para la valoración jurídico-penal del abuso de la ley por parte de representantes oficiales del Estado. Se divide en dos situaciones: a) una evaluación de las acciones de los servidores públicos que consistentemente encarnan la política ilegítima e ilegal del Estado; b) una evaluación de las acciones de los representantes del estado en condiciones en que tales acciones divergen del contenido de la política legal del estado. Cuando la conducta delictiva de los servidores públicos es una continuación de la «política criminal» del Estado, su responsabilidad no puede basarse enteramente en el concepto de abuso de derecho. Los autores utilizaron el método de comparación como método principal de la investigación. Como conclusión se distinguen la aplicación de leyes ilegales y la aplicación ilegal de leyes. Si en el primer caso no es posible establecer signos de abuso del derecho, entonces en el segundo caso es bastante posible científicamente hablando, lo cual es esencial para la calificación de las acciones de los perpetradores.

Palabras clave: constitucionalización del derecho penal; responsabilidad de los funcionarios públicos; responsabilidad del Estado; abuso de la ley; delito oficial.

Introduction

Criminal law takes legal relations under its protection, which are developing in almost all spheres of public life, both between citizens and in the relationship between citizens and the state. Because of this, not only cases of abuse of rights by citizens concerning other individuals and the state fall into the sphere of criminal law response, but also cases when representatives of the state abuse their rights in relations with citizens. This refers to the abuse of official rights and duties, official status, the position when a representative of the state acts in an official capacity. The criminal law contains several articles describing such abuses, the most general of which are Articles 285 and 286 of the Criminal Code of the Russian Federation and which are supplemented by a significant array of special norms.

1. Methods

The authors choose the comparison method as the main research method. The method was chosen for the effective conduct and preparation of the procedure for identifying the connection between abuse and the classic violation of human rights by the state. This method is used when comparing complex objects and phenomena that are described by a large set of widely varying features.

When discussing the abuse of rights by civil servants, it is important to pay attention to the existence of a close connection between such abuse and the classic violation of human rights by the state. This connection, however, does not mean that the phenomena are identical. We need both a strictly differentiated approach and a generalized assessment that takes into account aspects of the state's legal policy.

At least two problematic situations should be distinguished here.

The first situation is the need to assess the actions of civil servants who consistently implement such a state policy, which by its nature is not legal and is aimed at depriving or restricting citizens of their rights and freedoms. This policy itself, in principle, can be assessed as an abuse of the law by the state – a legitimate use of the law in contradiction with the intended purpose and meaning of the law to the detriment of human interests. History contains enough examples in this regard, when officials formally fulfilling their official duty and implementing the prescriptions laid down in normative acts, actually implemented a policy of legal restrictions and repression. The behavior of officials here is inseparable from the state policy, is a necessary and consistent implementation of it.

The second situation is to assess the actions of state representatives to abuse their official powers in conditions when such actions are at odds with the content of the state's legal policy. *Remaining* in the official status, civil servants, abusing their official rights and duties, act in this case against not only the interests of citizens but also the interests of the state. Their behavior is very clearly distanced from the official political and legal course, which goes against it.

These situations give rise to extremely difficult questions in political and legal, constitutional, and criminal aspects about the responsibility of both the state as such and its specific representatives.

2. Results

The common place of these different situations is the indispensable responsibility of the state. It has a constitutional and legal nature

(Kolosova, 2006; Signatova, 2006; Kondrashov, 2011) and is meaningfully expressed in political, financial, civil, and other forms of sanctions – from rehabilitation to compensation for moral damage. Significant requirements for such liability were established by the Constitutional Court of the Russian Federation, which, in particular, concerning the problem of compensation for harm, recognized:

- within the meaning of Art. 53 of the Constitution of the Russian Federation, everyone shall have the right to state compensation for damages caused by unlawful actions (inaction) of bodies of state authority and their officials, and it is obliged to compensate for harm associated with the implementation of state activities in its various spheres, regardless of the imposition of responsibility on specific state authorities or officials and regardless of the fault of these persons (Resolution of the constitutional court of the Russian Federation No. 18-P, 1997; Resolution of the constitutional court of the Russian Federation No. 38-P, 2019):

- The state assumes responsibility for the illegal actions of each official or authority, including both the issuance of normative acts, individual power orders, and actual actions (illegal, harmful behavior) or inaction, in particular, the failure of a state body or official to perform those actions related to the scope of their public-legal (power) duties that they should have committed following the law (Determination of the constitutional court of the Russian Federation, 2009).
- The changes that have occurred in the organization of power, the change in the legal nature and powers of the bodies exercising public power, do not in themselves imply the deprivation of the citizen of the right to compensation for harm, which, because of illegal actions (inaction) of no longer existing authorities, has arisen for him/her at present (Resolution of the constitutional court of the Russian Federation No. 26-P, 2019).

Without going further into the study of the question of the responsibility of the state itself (as obviously going beyond the scope of our topic), we will pay attention to the problems that arise with the implementation of the responsibility of its representatives acting as individuals. There are at least two main ones: about the possibility of bringing officials to criminal responsibility and about the qualification of their actions, their separation from an ordinary law enforcement error. They correlate with the situations highlighted earlier, reflecting the different relationship between the actions of civil servants and official policy.

In the case when the criminal behavior of civil servants is a continuation of the «criminal policy» of the state, a change in the political course always raises the question of the possibility of bringing such persons to justice in

the updated political and legal conditions (Ledyakh, 1973; Kudryavtsev and Trusov, 2002; Agilar, 2013). In Russian conditions, concerning the change of the political and legal regime in the 90s of the last century, this issue should be resolved based on Part 2 of Article 18 of the Law «On the Rehabilitation of Victims of Political Repression», which stipulates:

employees of the Cheka, GPU-OGPU, NKVD, MSS, prosecutor's offices, judges, members of commissions, «special meetings», «twos», «threes», employees of other bodies that exercised judicial powers, persons who participated in the investigation and consideration of cases, who were found guilty of crimes against justice following the established procedure on political repression, are criminally liable based on the current criminal legislation (Federal law of the Russian Federation No. 1761-1, 1991).

Meanwhile, there are several legal obstacles to the implementation of this order (including the doctrine of the execution of the order, the statute of limitations for bringing to responsibility, compliance with the procedural procedure for bringing certain categories of officials to responsibility), and most importantly, political properties. In a summary, the main factors contributing to this, in our opinion, are as follows:

- In Russia, unlike, for example, post-war Germany, there were no officially established signs of crime and guilt in the behavior of the state itself and it bodies in conducting illegal policies, we recognized the presence of victims of repression, but their subject was not established.
- The provisions of the Law "On the Rehabilitation of Victims of Political Repression" allow only representatives of the judiciary and executive authorities to be found guilty of repression, which does not allow raising the question of the responsibility of representatives of legislative bodies, public organizations, and political parties and indirectly reflects the recognition that the illegal nature was not so much the state policy itself, as its implementation at the law enforcement level.
- The country still largely retains the priority of a normative understanding of the right and the identification of right with the law, there is no developed doctrine of the application of the principles of law, which generally removes the question of responsibility for the application of non-legal regulations.
- There is a tendency not to touch on politically sensitive topics and historical issues, the discussion, and solution of which can serve as a factor in the destruction of social peace and harmony.

While legal factors can be considered relatively easy to overcome due to changes in legislation and consistent compliance with the principles and

norms of international law, the latter requires political efforts, the exertion of political will. As far as we can judge, the corresponding political campaign has not been launched in Russia.

The Law of the Russian Federation «On the Rehabilitation of Victims of Political Repression» (in the preamble) recognized that millions of people had become victims of the arbitrariness of the totalitarian state during the years of Soviet power and were subjected to repression for political and religious beliefs, on social, national, and other grounds. The Constitutional Court of the Russian Federation also stated that the regime of unlimited, based on violence, power of a narrow group of communist functionaries had been dominating in the country for a long time (Resolution of the constitutional court of the Russian Federation No. 9-P., 1992).

Russia, as the legal successor of the USSR – «the state activities of which are associated with the infliction of harm, by its nature representing harm that is incalculable and irreparable», is obliged to strive for the fullest possible compensation for such harm (Resolution of the constitutional court of the Russian Federation No. 39-P, 2019). The forms and methods of such compensation are determined by the said law. Therewith, it is precisely compensatory measures, the restoration of violated rights, that the state's responsibility for political repression is limited, which is directly prescribed by the purpose of the Law «On the Rehabilitation of Victims of Political Repression», as it is fixed in its preamble.

The practice of retroactive public-legal responsibility of state representatives for the implementation of illegal policies in Russia has not been developed, as clearly evidenced by the experience of the Commission under the President of the Russian Federation on the rehabilitation of victims of political repression.

Meanwhile, from the point of view of purely legal norms (both constitutional and the Law «On the Rehabilitation of Victims of Political Repression»), there are no obstacles to the realization of the responsibility of the perpetrators (Bobrinskii, 2014, 2018). In the context of our topic, it is worth noting that such responsibility cannot be entirely based on the concept of abuse of law. Theoretically, it *is important to distinguish between two points: the application of illegal laws (for example, on responsibility for anti-Soviet agitation and propaganda) and the illegal application of laws (for example, a conviction for political reasons for state or other crimes).*

The prerequisites for such a gradation are contained in Articles 3 and 5 of the law «On the rehabilitation of victims of political repression». If in the first case it is not possible to establish signs of abuse of the right in the actions of law enforcement entities, then in the second case it is quite permissible, which is essential for solving the important question of the qualification of the actions of the perpetrators.

Note that Article 18 of the Law «On the Rehabilitation of Victims of Political Repression» refers to the responsibility of persons found guilty – we quote – «of crimes against justice». Thus, in our opinion, the state has officially confirmed that from a legal point of view, it does not intend to consider political repression as crimes of the state itself against human rights and freedoms but allows for only the behavior of specific officials associated with the illegal application of laws to be assessed as crimes against justice.

This circumstance (we will deliberately refrain from evaluating it) in the concrete historical conditions of Russian reality largely erases the differences between the previously highlighted situations of differentiated participation of state representatives in the implementation of its political course. It is formally *proclaimed that the country's legal policy at all times corresponded to constitutional standards, while at the law enforcement level, the behavior of individual officials went beyond the law and was illegal.*

When assessing such behavior from the point of view of the criminal law, the question of distinguishing between criminal abuse of law and error necessarily arises. This issue was partly considered by the Constitutional Court of the Russian Federation concerning the problem of judicial errors, but it seems that its conclusions are general. The court recognized that the federal legislator distinguishes two types of judicial errors. Firstly, when carrying out judicial activities, there may be errors that do not discredit a priori the persons who made them, which arise during the resolution of a particular case when interpreting and applying the norms of substantive or procedural law and are subject to correction by higher judicial instances.

Such unintentional judicial errors of an ordinary nature cannot be regarded as a manifestation of an unfair attitude of a judge to his/her professional duties and serve as a basis for applying penalties to him/her. Secondly, a different type of judicial errors is possible, which are the result of the incompetence or negligence of the judge, i.e., the unfair performance of his/her function in the administration of justice, leading to a distortion of the fundamental principles of judicial proceedings and a gross violation of the rights of participants in the process.

In cases where the issuance of an unlawful judicial act due to such an error does not fall under the signs of a crime, it can nevertheless indicate either the obvious negligence of the judge, or his/her inability to perform his/her professional duties, which is unacceptable in the administration of justice, and therefore, be the basis for applying disciplinary measures to him/her (Resolution of the constitutional court of the Russian Federation No. 19-P, 2011).

These guilty mistakes, therefore, can be either non-criminal or criminal, and in the latter case – either intentional or careless, which directly affects the qualification of the actions of the guilty person (in particular, the application of Article 305 of the Criminal Code of the Russian Federation or Article 293 of the Criminal Code of the Russian Federation).

Conclusion

Authors conclude that it is intentional mistakes, which, due to their intentional nature, are poorly associated with the etymological concept of error, and should be considered as a manifestation of abuse of the law by the law enforcement officer, since there is a conscious use of the opportunities provided to him/her against the interests of law, distortion of law and distortion of justice.

Abuse of law by public servants may be a reflection of the anti-legal policy of the state, and in this case, the interests of law require both the responsibility of the state itself, as well as the responsibility of officials whose behavior, not justified by the concept of executing an order cannot be evaluated from the standpoint of abuse of law; the behavior of officials may not be related to legal policy, and in this case, it is the abuse of law as a deliberate and incorrect application of law that serves as the basis for the responsibility of the perpetrators.

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Modern urban development policy: normative regulation

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Abstract

The article reveals the importance of the legal institution in the urban planning structure in the Russian Federation, using the methods of content analysis and deductive and inductive approaches. In connection with the creation of a new public-legal entity for Russia, the federal territory "Sirius", a comparative analysis was carried out, as a result of which it is evident that the territories of the federal capital were identified as optimal in terms of the success of development, the economic achievement of which is due, among other things, to novel progress, generally based on the acquisition by the public authorities of the federal territory of special rights over parcels within federal territories. Considering that one of the objectives of the creation of the federal territory "Sirius" is a complex sustainable and innovative socioeconomic development of the territory and, in addition, with the factor of lack of legal certainty, the authors conclude that the need to use a new conceptual apparatus of elements of planning structure in the regulation of urban planning activities of the territory is justified. federal, which are defined and ascribed in the general regulatory system.

Keywords: Sirius federal territory; elements of the planning structure; sustainable development of the territory; normative regulation; urban development.

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Política de desarrollo urbano moderno: regulación normativa

Resumen

El artículo revela la importancia de la institución legal en la la estructura de planificación urbana en la Federación de Rusia, utilizando los métodos de análisis de contenido y enfoques deductivos e inductivos. En relación con la creación de una nueva entidad pública-legal para Rusia, el territorio federal "Sirius", se llevó a cabo un análisis comparativo, como resultado de lo cual se evidencia que los territorios de la capital federal fueron identificado como óptimos en términos del éxito del desarrollo, cuyo logro económico se debe, entre otras cosas, al progreso novedoso, generalmente basado en la adquisición por parte de las autoridades públicas del territorio federal de derechos especiales sobre parcelas dentro de territorios federales. Considerando que uno de los objetivos de la creación del territorio federal «Sirius» es un complejo desarrollo socioeconómico sostenible e innovador del territorio y, además, con el factor de falta de certeza jurídica, los autores concluyen que se justifica la necesidad de utilizar un nuevo aparato conceptual de elementos de estructura de planificación en la regulación de las actividades de planificación urbana del territorio federal, los cuales se definen y adscriben en el sistema normativo general.

Palabras clave: territorio federal «Sirio»; elementos de la estructura de planificación; desarrollo sostenible del territorio; regulación normativa; desarrollo urbano.

Introduction

The appearance of a modern city is determined by its layout, the formation of which is historically and economically determined by many factors. Construction materials change over time. Planning decisions for the placement of buildings, structures, and constructions also change. The most important influencing factors on the location in territorial planning are the geographical terrain and the emerging market factors in commodity turnover.

Typical methods of territory planning are well-known: firstly, radial-concentric, secondly, linear, thirdly, grid-network, and, fourthly, radial (fan) (Mityagin and Spirin, 2019).

All these methods of planning are used in one way or another in modern urban planning. The combination of these methods is designed to form a spatial organization in which the population is provided with sufficient transport, engineering, and social infrastructure facilities and has access to places of employment.

However, settlements, planning solutions of which did not have a historical background and were formed completely from scratch are very popular: Vasilievsky Island in St. Petersburg, Manhattan in New York, etc. The popularity of such solutions is explained by the use of the Grid plan, according to which the streets intersect perpendicular, and the blocks have a square shape. Similarly, K. Wren's urban planning solutions, implemented after the Great Fire of London in 1666, were also popular, due to which fire insurance appeared, and the modern City (Zone One) has a planning system based on lattice-network solutions.

Therewith, the normative and legal regulation of relations in urban planning, including in the part concerning the possibility of using certain planning decisions in the public interest, do not find a proper degree of regulation in Russian legislation, leaving the institutionalization of a specific planning decision concerning a locality in the discretion of the project organization preparing a draft of the relevant territorial planning document.

Since in this case, this refers to the public interest, the institution of public hearings (public discussions), designed to gain public consensus in making certain planning decisions, is considered insufficient. After all, concerning other legal relations, but also aimed at forming a collective will, the tools of general meetings are used in the Russian legal order as procedures for forming a collective expression of will, rather than expressing an opinion (Mayboroda, 2018). In this connection, the paper examines the problem of legal uncertainty in the regulation of the used institute of territory planning in urban planning activities in terms of the formalization of the elements of the planning structure.

1. Methods

The object of the study is the public legal entity of the "Sirius" federal territory (Russia).

The study uses a comparative analysis of the regulation of similar relations in foreign legal systems. The semantic meaning of the concept of "planning structure" is revealed through the use of content analysis. The methods of deduction and induction are used to construct possible ways to improve the regulation of the studied legal relations concerning the goals of creating a federal territory in Russia, considering the possibility of innovating the entire territorial development of the Imaret Lowland.

2. Results

2.1. Analysis of the element of the planning structure in the system of normative regulation of the urban planning legislation of Russia

Clause 35 of Article 1 of the Town Planning Code of the Russian Federation (2004) defines an element of planning structure as a part of the territory of the settlement, city district, or the inter-settlement territory of the municipal district (quarter, the residential district, the area, and other similar elements).

The corresponding authority is assigned to the Government of the Russian Federation to authorize the executive authority to establish the types of such elements.

The Government of the Russian Federation, for its part, by paragraph 5 of the Decree of the Government of the Russian Federation No. 1221 of November 19, 2014 "On approval of the rules for assigning, changing and canceling addresses" (2014), authorized the Ministry of Finance of the Russian Federation to approve the list of elements of the planning structure, elements of the street and road network, elements of addressing objects, types of buildings (structures), premises used as address details, as well as the rules for abbreviating the name of address-forming elements.

The Ministry of Finance of the Russian Federation implemented this authority by adopting Order No. 171n dated November 5, 2015 "On approval of the list of elements of the planning structure, elements of the street and road network, elements of addressing objects, types of buildings (structures), premises used as address details, and rules for abbreviated naming of address-forming elements" (Order of The Ministry of Finance of the Russian Federation, 2015).

The named order lists the elements of the planning structure: shaft; zone (array); quarter; field; microdistrict; embankment; Island; the park; port; area; garden; square; territory; the territory where citizens conduct gardening or horticulture for their own needs; the territory of a horticultural non-profit partnership; the territory of the homeowners' association; the territory of a gardening non-profit partnership; consumer cooperative territory; the territory of the partnership of real estate owners; yurts.

The Decree of the Government of the Russian Federation dated November 18, 2013, No. 1038 approved the Regulation on the Ministry of Construction and Housing and Communal Services of the Russian Federation, subparagraph 5.4.86 of which the Ministry of Construction is authorized to establish the types of elements of the planning structure (Decree of the Government of the Russian Federation, 2013).

By order of the Ministry of Construction and Housing and Communal Services of the Russian Federation No. 738/pr dated April 25, 2017, the types of elements of the planning structure were approved: district; micro district; quarter; common area, except for elements of the planning structure included in the road network; the territory where citizens conduct gardening or horticulture for their own needs; the territory of the transport hub; the territory occupied by a linear object and (or) intended for the placement of a linear object, except for the street-road network and directly – the street-road network (Order of the Ministry of Construction and Housing and Communal Services of the Russian Federation, 2017).

Resolution of the Government of the Russian Federation No. 1221 of November 19, 2014, is an act regulating legal relations in the field of addressing (2014). The address, according to paragraph 1 of Article 2 of Federal Law No. 443-FZ of December 28, 2013 "On the federal information address system and on amendments to the Federal Law "On general principles of organizing local self-government in the Russian Federation " is a description of the location of the address object, structured following the principles of organizing local self-government in the Russian Federation and including, among other things, the name of an element of the street and road network and (or) the name of an element of the planning structure (if necessary), as well as a digital and (or) alphanumeric designation of the address object, allowing it to be identified (Federal Law of the Russian Federation, 2013).

Decree of the Government of the Russian Federation No. 1038 of November 18, 2013, establishes the powers of the Ministry of Construction of the Russian Federation, which is a federal executive authority that performs functions for the development and implementation of state policy and regulation, including in the field of urban planning, but except for territorial planning (Decree of the Government of the Russian Federation, 2013).

Thus, there is an obvious discrepancy in the system of normative legal regulation on the types of elements of the planning structure, formally generated by the spheres of regulation distributed among the executive authorities.

However, it seems that this discrepancy has a true nature of uncertainty in the regulation of the relations of the actual planning structure, the elements of which therefore do not have a definition, but only an enumeration. That is, an element of the planning structure should be formalized as an institution of relations on the planning of the territory, having independent goals and objectives.

Content analysis in the absence of a legal concept of "planning structure" allows distinguishing two semantic components in it: "planning" and

"structure". Planning is a tool for a long-term logical assumption about a certain period (planning horizon), the onset of which is extrapolated from the corresponding period of previous experience. A logical assumption can have both a time vector and space, a certain territory, as the sphere of application. Federal Law No. 172-FZ of June 28, 2014 "On strategic planning in the Russian Federation" in paragraphs 18 and 19 of Article 3 defines the medium-term planning period (from 3 to 6 years) and the long-term planning period (over 6 years) (Federal Law of the Russian Federation, 2014).

By virtue of parts 10 and 11 of Article 9 of the Town Planning Code of the Russian Federation, territorial planning schemes of the Russian Federation are approved for a period of 10 to 20 years, and master plans of settlements, master plans of urban districts are approved for at least twenty years. That is, considering the above criterion, these documents are long-term planning documents.

The documentation on the planning of the territory, according to the definition given in Article 41 of the Town Planning Code of the Russian Federation, in contrast to the above documents of territorial planning, covers only the territory, but not the time vector in any medium-term, long-term, by the pattern of its assumption. In fairness, we should point out that the law does not imply the possibility of covering any desired territory with documentation on the planning of the territory. The list of cases upon the occurrence of which the placement of objects is carried out with the obligatory preparation of documentation for the planning of the territory is exhaustive and is defined in part 3 of article 43 of the Town Planning Code of the Russian Federation.

The structure is an ordered structure of the mutually dependent elements of an object. The above long-term planning documents have the main element of the structure – functional zoning. By virtue of paragraph 5 of Article 1 of the Town Planning Code of the Russian Federation, functional zones are zones for which documents of territorial planning determine borders and functional purpose Summing up the above, it should be concluded that the planning structure (in this case, the territory) is an ordered representation of the future development of this territory, mutually organized according to the functional purpose of the part of the territory defined by the borders, determined by the territorial planning document or the documentation on the planning of the territory. This understanding is consistent with the definition of territorial planning. According to paragraph 2 of Article 1 of the Town Planning Code of the Russian Federation, territorial planning.

The above does not allow considering the elements of the planning structure directly as part of the territory. According to the above, the elements of the planning structure should first be included in the functional zone, and only then, being elements of the functional zone and having the

immanent properties of a specific functional zone, open the possibility of forming a spatial organization with documentation on the planning of the territory. That is, an element of the planning structure is not a part of the territory, but a part of the functional zone to be allocated in the territorial planning document.

Contrary to what is given in the urban planning legislation, the elements of the planning structure are distinguished not in the development of territorial planning documents, but, according to part 1 of Article 41 of the Town Planning Code of the Russian Federation, with documentation on the planning of the territory, the formation of which becomes possible only in the presence of territorial zones, that is, after the transformation of the regime of functional zones into the regime of territorial zones from the documents of territorial planning in the rules of land use and development – within the meaning of part 1 of Article 41.1., of the Town Planning Code of the Russian Federation.

Thus, the property of planning in time is lost, and the planning structure, according to the revealed meaning of the term in the system of normative regulation, means exclusively planning of the spatial organization, that is, of already formed development. In this situation, it is pointless to try to organize the space according to the best models from the accumulated experience of mankind in urban planning.

Accordingly, the disclosure of the semantic content of the concept of "element of the planning structure" in the presumed meaning of striving for the better becomes unattainable, and therefore the lack of legal certainty concerning the elements is explained by purely utilitarian needs: each of the elements of the planning structure is not formed by itself, in search of an optimal ratio between the number and availability of infrastructures, but is used in the most appropriate way to the already formed building.

2.2. Formation of the "Sirius" Federal Territory

The Federal Constitutional Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation of March 14, 2020, No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public power", among other amendments to the Constitution of the Russian Federation, reformulated the content of part 1 of Article 67 (Federal Constitutional Law of the Russian Federation, 2020). The Federal Constitutional Law has supplemented the norm with new proposals that federal territories can be created on the territory of the Russian Federation following federal law. The organization of public power in federal territories is established by the specified federal law. Federal Law No. 437-FZ of December 22, 2020 "On the "Sirius" federal territory" (hereinafter referred to as Law No. 437-FZ) created the first federal territory of the same name (Federal Law of the Russian Federation, 2020).

Article 2 of Law No. 437-FZ defines that a public legal entity of national strategic importance is recognized as the Sirius federal territory. Further in the text of the above norm, the goals of its creation are fixed. The "public law education" term is used in industry legislation and the doctrine of both private law and public relations, but in respect to this aspect, it is important to understand that this public law education can exercise public powers in the totality of their separation in ordinary legal regimes through unified public authorities. The public authorities of the federal territory exercise federal powers, the powers of the state authorities of the subjects of the Russian Federation, and municipal powers.

According to the provisions of Law No. 437-FZ, the goals of creating a federal territory are indicated: a) ensuring comprehensive sustainable socio-economic and innovative development of the territory; b) increasing the investment attractiveness of the territory; c) the need to preserve the Olympic sports, cultural and natural heritage; d) creation of favorable conditions for the identification, self-realization, and development of talents; e) implementation of the priorities of scientific and technological development of the Russian Federation.

The goals specified in paragraphs "a", "b" and "d" are the goals that all public legal entities strive to achieve in one form or another, and thus, only achieving the goals given in paragraphs "c" and "d" is non-trivial. That is, the creation of a new public-legal entity – the federal territory pursues the achievement of two new goals that were not previously set before public-legal entities: the preservation of the Olympic sports, cultural and natural heritage, and the creation of favorable conditions for the identification, self-realization, and development of talents (Mayboroda, 2021).

According to the provisions of Article 2 of Law No. 437-FZ, the federal territory is defined as a public legal entity, which qualitatively distinguishes this entity from the territories of advanced development, special economic zones, innovative development centers, and similar territorial entities created in the previous time, united according to the criterion of delegating public powers to a private legal entity, usually called a "management company".

The purpose of such delegation is the establishment by the management company of the specifics of development in the isolated territory, thanks to which the legislator assumes especially intensive economic growth. In contrast to the above experience, in the case of the federal territory, the delegation of state management powers, including the establishment of the specifics of economic activity to a private entity, has not been made. Due to another constitutional innovation, public authorities are being created in the federal territory, the essential content of the nature of managerial decisions of which differs from the powers of state authorities and self-government bodies.

The "public authorities" term introduced by the novelties of the Constitution has not received its normative legal definition. Article 2 of Federal Law No. 394-FL of December 8, 2020 "On the State Council of the Russian Federation" defines the concept of a unified system of public power, which, within the meaning of this norm, means the entire set of state authorities and local self-government bodies.

Federal Law No. 271-FZ of July 1, 2021 "On amendments to the Federal Law "On the "Sirius" federal territory" defines the legal possibilities for fixing the specifics of urban development activities in the federal territory "Sirius" – Article 46.1 of Law No. 437-FZ (Federal Law of the Russian Federation, 2021). It is the public authorities of the federal territory that are given the opportunity to determine the specificity in regulation, including urban planning legal relations. However, the provisions of this law do not affect the possibility of establishing features in the elements of the planning structure of the federal territory, and paragraph 4 of part 2 of this Article provides public authorities with the opportunity to determine the features of the composition, content, procedure for developing, approving, including documentation on the planning of the territory prepared within the boundaries of such a federal territory. It is not obvious that it is possible to independently determine the types of elements of the planning structure and their content.

3. Discussions

3.1. Foreign experience of urban planning in federal territories

Directly, the term "federal" allows asserting that the territorial entity in question can only be located in a federal state. The very approach of granting a differentiated scope of rights and obligations to the subjects of the federation creates prerequisites for the formation of the idea that the federation may consist of other elements than exclusively only from the subjects, even if they are differentiated, but endowed with territorial and public autonomy.

Thus, the federations consisting only of subjects in the literature include the Republic of Austria, the Kingdom of Belgium (given that its "two-layer" federalism implies the existence of only homogeneous territorial units in each layer), the Federal Republic of Germany, the Federated States of Micronesia, the Federal Democratic Republic of Nepal, the United Arab Emirates, the Union of Comoros, the Federation of St. Kitts and Nevis, Sudan, the United Republic of Tanzania, the Swiss Confederation (Praskova, 2013). These states do not have entities that are not endowed with the status of a subject of the federation.

In addition to federations consisting only of subjects, a significant array of them is formed by states, which include territories and (or) other entities that are not endowed with the status of subjects. Currently, there is no terminological unity in the name of the parts of the federation that do not have the status of a subject of the federation in Russian legal thought.

For example, the federal structure in India is completely directly divided between the States of India and the territories (union territories). The Union territories, as well as the national capital district of Delhi, are governed by federal authorities, although in some cases they have their parliaments and governments, but with a very limited range of powers. The federal legislation of the Indian Republic is directly applicable in the Union territories (Pandey, 2012). However, another circumstance is important in the given example – the capital district.

In many federal states of the world, the experience, applied for the first time in the United States, is used to create a special federal territory – a federal district intended to house the federal government and federal authorities. Currently, the Republic of Argentina, the Federal Republic of Brazil, the Bolivarian Republic of Venezuela, the Republic of India, the United States of Mexico, the Federal Republic of Nigeria, the Islamic Republic of Pakistan, the United States, Ethiopia has the federal territory or district for the placement of the capital.

In the United States of America, which for the first time implemented the idea of federal-state construction with visible isolation of the capital district, the history of this issue began in 1790, in which the "Act of Residence" (full name – "An Act for establishing the temporary and permanent seat of the Government of the United States") was adopted (U.S. Statutes at Large, 1790). The document, dated July 16, 1790, assigned an area to the US government, not exceeding ten square miles and located on the Potomac River, in a place between the mouths of the East Branch and the Conococheague Creek[3].

The Australian Union and Malaysia have similarly created special territories for the placement of capitals. The Australian Capital Territory (the location of the city of Canberra and the seat of the Union authorities) has its authorities, whose powers (including legislative ones) are in many respects similar to the powers of the relevant state bodies, as well as representatives in the Federal Parliament.

The Australian Capital Territory was created by the law "Seat of Government Acceptance Act". The named Law has the number 23, signed by the Governor-General Lord Dudley on December 13, 1909, together with

3 "That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States".

the Law on the Surrender of the seat of Government in the Parliament of New South Wales, allowed transferring "an area of about 900 square miles" from New South Wales to create a federal capital territory as the seat of the Commonwealth government.

The federal territory of Kuala Lumpur (on the territory of which the capital is located), following article 1 of the Constitution of Malaysia, is not part of the territory of the state of Selangor, it is a territory of the federation. The territory of Kuala Lumpur has had the status of the "national and legislative capital" since 2001, and the executive and judicial bodies have been transferred to a specially built center in the federal territory of Putrajaya, (physically – formerly a suburb of Kuala Lumpur).

The idea to replace Kuala Lumpur with Putrajaya as the capital appeared in the late 1980s.

It is this formation that can serve as a guide in the formation of the Russian federal territory. Therewith, the Federal Government paid the Selangor State Government for approximately 11,320 acres (4,581.04 ha) of land in Prang Besar.

Construction began in August 1995, and it was Malaysia's largest project and one of the largest in Southeast Asia, with an estimated final cost of 8.1 US Dollars Billion (33.29 billion ringgit). All government ministries had moved to Putrajaya by 2005, except for the metropolitan Ministry of International Trade and Industry, the Ministry of Defense, and the Ministry of Labor.

The successes achieved in this field – the transformation of the capital of Malaysia into a symbol of prosperity, the financial capital of Asia have formed a stable idea that the separation of the federal territory as an entity that is not part of any of the states is one of the elements necessary for a successful economic strategy.

This experience was reproduced again. In addition, the new capital Putrajaya is designed to be such a personification of success that when designing and creating it, all the advanced ideas about a "smart city" were taken into account, combining high technologies and ecological reconstruction of the landscape used in the construction of the territory.

Another noteworthy example is Pakistan, which gained independence on August 14, 1947, as a result of the partition of the former British colony of British India on religious grounds (Lafitsky, 2013). The capital of Pakistan, Islamabad, was built in 1960 to replace Karachi as the capital of Pakistan. As the Islamabad development information resource points out, "there was a feeling that it was necessary to build a new and permanent capital to reflect the diversity of the Pakistani nation" (Government of Pakistan, 2021).

However, it would be more correct to say that as a result of the post-colonial division of India and Pakistan into two independent countries on religious grounds, there were refugees in both one and the other country, whose placement and integration into social life was realized concerning Pakistan through the construction of new capital. The logic of this event is very straightforward and conveys the message in a direct form: a new state is a new capital, and the name of the capital is also "self-explanatory": "the city of Islam", being in correspondence with the name of the republic – the Islamic Republic of Pakistan.

The capital territory of Islamabad is such because of the planned creation of new capital and is not endowed with separate visible rights that separate it from the four federal elements – the provinces of Pakistan. Its status as a capital territory is enshrined in the Constitution of Pakistan, which was adopted in 1972 and operated until 1977 when a military coup led by General Zia-ul-Haq was carried out, after which its operation was suspended until 1985. Such a situation of the capital – the planned creation, clear zoning of the territory, and direct federal administration led to the fact that Islamabad became very different from other territories of Pakistan. Today, the administration of the federal capital territory of Pakistan is located in a complex hierarchy of federal bodies and territorial development bodies (Capital Development Authority Organogramm, 2020).

Finally, the largest number of federal capital territories concerning the world region is observed in Latin America. The "Distrito Federal" term itself, meaning the Federal District in Portuguese and Spanish, is used to refer to the respective territories in Brazil – the Federal District of Brazil; The Federal District of Venezuela, where the capital of Venezuela Caracas is located, the former Federal District in Argentina, converted to the Autonomous City of Buenos Aires in 1994, and the former Federal District of Mexico converted to Mexico City in January 2016.

The Federal District of Brazil is the third capital of the country, after Salvador and Rio de Janeiro. The decision on the transfer was made on April 21, 1960, by President Juscelino Kubitschek de Oliveira and the transfer was carried out in a specially created federal territory for this purpose.

The period of preparation from 1955 to 1960, based on the so-called "pilot plan of Brazil", is directly transferred to the discussion. The period of discussion about the transfer of the capital began in 1891 when the first constitution of the Republic of Brazil determined that the future capital should be located on a large rectangular plateau inside the state of Goias at a distance of nine hundred kilometers from Rio de Janeiro – as not only a symbol of liberation from colonial dependence on Portugal but also as a means of security from capture from the sea. However, the constitutional crisis of 1955 "helped" to implement the idea directly Juscelino Kubitschek won in the democratic elections that followed, one of whose election slogans

was the construction of a new capital (Brasil, 2021). Therewith, the reason for such construction was the need for the development of the interior of the country, which continued to remain sparsely populated.

The Bolivar Republic of Venezuela has 23 states (estados), 1 Metropolitan District (Distrito Capital) in which the capital Caracas is located, and 1 separate administrative-territorial unit – federal possessions (Dependencias Federales) which includes almost all the islands belonging to Venezuela. The capital Territory, according to article 18 of the Constitution of Venezuela, is divided into municipalities – directly the municipalities of the capital federal territory and the municipalities of the State of Miranda, which includes the federal capital Territory (Current Constitution of Venezuela, 1999).

The federal capital District in Argentina, transformed into the autonomous city of Buenos Aires in 1994 as a result of constitutional reform, is currently the federal capital in which the government of Argentina is located, but it is separated from the subject of the same name – the province of Buenos Aires. The reform was a consequence of the war for the Falkland Islands (Constitution of the Argentine Nation, 1994). According to the current version of the Constitution of Argentina of 1994, article 3, it is provided that the federal authorities, based on a special law, are located in the capital, with the preliminary cession of the territory for this purpose by the legislatures (legislative assemblies) of one or more provinces for these purposes. Article 45 directly proceeds from the assumption of the transfer of the capital from Buenos Aires, indicating "if it is moved" (Constitution of the Argentine Nation, 1994).

The Federal Capital Territory is an area in the central part of Nigeria. The capital of Nigeria, Abuja, is located on this territory.

The Federal Capital Territory was formed in 1976 from parts of the old states of Kwara, Niger, Kaduna, and Plateau, with most of the territory obtained outside the state of Niger, located in the Middle Belt of the country. According to the current, fifth Constitution of Nigeria of 1999, the existence of a capital federal territory is directly stipulated in article 2 (Constitution of the Federal Republic of Nigeria, 1999).

The Administration of the Federal Capital Territory was established by President Olusegun Obasanjo on December 31, 2004, after the abolition of the Ministry of the Federal Capital Territory and the proclamation of the course for the adoption of the 2014 Olympic Games. Seven new divisions were created for education, transport, agriculture and rural development, health and social services, social development, legal services, and territorial councils.

The goal was to carry out the reconstruction of the city to eliminate slums and formalize it in the perception of the modern capital. For these

purposes, a single waste management service has been created, a single geographic information system service that provides the infrastructure of geospatial data in a single coordinate system to register rights to land plots in such a way that it would allow for re-registration of rights to them on the legal basis of a counter submission.

A comparative analysis with foreign legal systems allows concluding that when forming federal territories, in some cases it was possible to achieve the goal of forming such an architectural and urban appearance that would correspond to the goals of forming a federal territory. These cases are based on the suppression of the property rights of previous right holders, or on such a development, the territory intended for which had no other owners than a public legal entity.

3.1. Elements of the planning structure of the "Sirius" federal territory

It seems necessary to formalize a general legal definition of the elements of the planning structure of the "Sirius" federal territory. Such a situation will allow further institutionalizing the universal idea of an element of the planning structure as an institution and its influence on the formation of the appearance of the federal territory will already be denied. The following definition is proposed – these are parts of the territory of the federal territory, the allocation and determination of the boundaries of which is carried out by documentation on the planning and surveying of the territory to ensure harmony in life.

The selection of the proposed elements implies the possibility of both independent preparation of documentation on the territory planning for each of them, and the preparation and approval of documentation on the territory planning of the entire "Sirius" federal territory. As can be seen from the list below, it borrows in part the existing elements of the planning structure and offers new ones that correspond exclusively to the planning of the "Sirius" federal territory based on the goals of its creation. In this situation, the presence of uncertainty in the already existing legal order is rather a favorable factor, because the presence of the specifics of the federal territory, per se obvious in such a situation, fills the proposed regulation with the degree of stability that will act as an element of investment confidence.

The allocation of elements corresponds with the following goals:

- "Cluster" element: create favorable conditions for the identification, self-realization, and development of talents, etc.
- "Olympic heritage" element: preserving the Olympic sports, cultural and natural heritage;
- "Embankment", "beach" element: innovative development of the territory and increasing its investment attractiveness.

Other elements correspond to the goals of ensuring a comprehensive sustainable socio-economic development of the territory, among which the key element is the "quarter", the area of which, if the rule on its orthogonality is observed, together with the prohibition of crossing the lines of the street and road network at sharp angles, should lead to its square-oriented form to an area of about 4-5 hectares. Blocks are combined into microdistricts and (or) clusters, the shape of which is also oriented to a square, rectangle, triangle, tetrahedron, etc.

The boundaries of not all elements of the planning structure are marked with red lines. Thus, the block, cluster, and microdistrict are located within the boundaries of the street and road network lines, not their red lines.

The zone of placement of linear objects and the Olympic heritage element are located within the boundaries formed by the sequential connection of characteristic points. It is important to emphasize that the identity of definitions, in this case, is based not only on linguistic identity but also on identity based on the unity of semantics (Tsapko *et al.,* 2018).

Types of elements of the planning structure of the federal territory:

1. The zone of placement of linear objects is an element for placing linear objects, the boundaries of which are defined by a sequential connection of characteristic points, consisting of land plots, parts of land plots.
2. A block is an element of an orthogonal configuration with sides from 150 to 300 meters, the entrance groups of buildings, structures, and constructions within which are adjacent to the red lines of the road network.
3. Cluster – an element consisting of blocks, microdistricts united by the unity of purpose, the borders of which are adjacent to the main streets of citywide significance.
4. Microdistrict – an element consisting of several quarters, united by the unity of social, public-business, and other service organization within its limits.
5. Embankment is a linear element designed to provide unhindered access to an unlimited number of people whose borders are defined by red lines, consisting of land plots.
6. The Olympic heritage is an element intended for the preservation of the Olympic sports, cultural and natural heritage, the boundaries of which are defined by a sequential connection of characteristic points, consisting of land plots.

7. Beach – a linear element designed to ensure unhindered access of an unlimited number of persons to a water body, the boundaries of which are defined by red lines, consisting of land plots.
8. The territory of common use is an element for ensuring unhindered access to an unlimited number of persons whose borders are defined by red lines, consisting of land, land plots, and parts of land plots.

A street and road network are an element intended for placing hierarchically organized linear objects: avenues, (main streets), streets, driveways, alleys, ascents, descents, boulevards, dedicated pedestrian, bicycle, bicycle-pedestrian paths, park roads, alleys, and other roads, with borders defined by red lines, the intersection of which is not allowed at sharp angles of less than 45 degrees.

Conclusion

The conducted research of the Institute of legal regulation of the elements of the planning structure concerning the formation of the innovative appearance of the "Sirius" federal territory allows concluding: firstly, the lack of certainty in the list of these elements and the lack of fixing the concept in the Russian legal order; secondly, only a new development based on the loss of previous property rights by right holders allowed foreign federal territories to find innovative development opportunities; thirdly, the elements of the planning structure proposed for the development of the "Sirius" federal territory are based both on the goals of its creation and take into account the territorial features of the location of the territory.

Thus, the public authorities of the "Sirius" federal territory can implement the proposed regulation of the institute of elements of territory planning, through which an innovative appearance corresponding to the name will be formed on the territory of the Imereti Lowland – the "Sirius" federal territory, that is, the brightest territory in the Russian Federation, as Sirius is the brightest star in the sky.

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Legal transformations in the Ukrainian legal system under the influence of international law

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Abstract

The article is devoted to a topic as topical as the legal transformations in the Ukrainian system under the influence of international law. Therefore, the aim of the article is to discuss the theoretical and practical aspects of the study of the impact of international law on domestic law, as well as to identify the differences and similarities between international law and Ukrainian law in the specific field of criminal and civil law. The methodological basis of the study consisted in the use of the system-structural method, which made it possible to determine the place of international legal norms in the system of national legislation and, also, the comparative method of international and Ukrainian legislation in force. In the main results obtained, it is revealed that the transformation of Ukrainian legislation is carried out mainly under the influence of Western globalization, which implies the transformation of a certain international law. It was concluded that, in the legal sphere of Ukraine, international agreements have been greatly influenced by the transformation of international law through the application of Ukrainian law through a process of legal synthesis.

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Transformaciones en el sistema jurídico ucraniano bajo la influencia del derecho internacional

Resumen

El artículo está dedicado a un tema tan actual como las transformaciones jurídicas en el sistema ucraniano bajo la influencia del derecho internacional. Por lo tanto, el objetivo del artículo es discutir los aspectos teóricos y prácticos del estudio del impacto del derecho internacional en el derecho interno, así como identificar las diferencias y similitudes entre el derecho internacional y el derecho ucraniano en el campo específico del derecho penal y civil. La base metodológica del estudio consistió en la utilización del método sistema-estructural, que permitió determinar el lugar de las normas jurídicas internacionales en el sistema de legislación nacional y, asimismo, el método comparativo de la legislación internacional y ucraniana vigente. En los principales resultados obtenidos **s**e revela que la transformación de la legislación de Ucrania se lleva a cabo principalmente bajo la influencia de la globalización occidental, que implica la transformación de cierto derecho internacional. Se llegó a la conclusión de que, en la esfera jurídica de Ucrania, los acuerdos internacionales se han visto muy influidos por la transformación del derecho internacional mediante la aplicación del derecho ucraniano mediante un proceso de síntesis jurídica.

Palabras clave: transformación legal; armonización jurídica; aplicación de la ley; normas de derecho internacional; derecho comparado.

Introduction

One of the central places in modern law is the issue of understanding and significance of the implementation of international law norms in domestic legislation. The problematic issue of this sphere is considered the presence of conflicts, similarities, and differences of interpretation of such norms, their understanding, and the need for implementation in the legislation of the signatory countries of international norms through appropriate treaties of an international character. Therefore, the coverage of all aspects of such legal phenomena as the legal transformation of international agreements should contribute to the understanding of all aspects of international law norms and improvement of ratification in domestic law.

1. Purpose

The purpose of the article is to summarize the theoretical and practical aspects of the impact of international law norms on domestic Ukrainian legislation, as well as to identify the differences and similarities of international law norms with Ukrainian legislation on the example of criminal and civil law in Ukraine. The aim was also to identify the existence of existing problematic aspects in the sphere of criminal law and the question of the need for the adoption of domestic special laws for the implementation of international law norms.

2. Article Methodology

To clarify the essence of legal integration in law, it is necessary to disclose the ways that are used to regulate integration (international-legal) relations. They include harmonization, implementation (reception, unification, incorporation). The methodological basis of the study consisted of the system-structural method, which allowed to determine the place of international legal norms in the system of domestic legislation and the comparative method of current international and Ukrainian legislation (Conventions, Laws, etc.).

3. Bibliographic overview

Efforts of modern jurists are directed to the consideration of the above question on the transformation and harmonization of Ukrainian legislation. Among such there are works.

In particular, Bronevytska and Serkevych (2020) analyzed more than seventy international treaties and determined that almost all treaties are not self-executing. They point to certain technical problems on the part of the Ukrainian state represented by the executive authorities. A similar opinion on this issue is held by scholar Sharmar, who notes that when implementing certain provisions of the acts of international legal nature, the domestic legislator does not necessarily take into account the specifics of the Ukrainian legislation on criminal liability.

4. Study results

The field of international law has been studied as a science and as an academic discipline for decades. Today, we can clearly say that it is a legal field, which aims to implement the regulation of both private and public law at the international level.

An important point is that the influence of international law is a significant aspect of the formation of legal systems in different states (Kvitka *et al*., 2021).

This sphere of influence of such norms has been studied by scholars of different countries for many years and is quite global and multifaceted (European Commission for democracy through law, 2014).

The study of this issue of the influence of international law norms on domestic law is very relevant today and for Ukraine because the domestic legal system has been undergoing significant changes at the legislative level for about 30 years.

First of all, it should be noted that examining this issue of transformation of the legal system, it should be said that in the theory of international law

there are such concepts as "legal globalization" and its macro-level and micro-level. It is clear that at the macro level the global legal system is formed, hence at the macro level - the national one (Biriukova, 2018).

It should be noted that the transformation of domestic legislation is carried out primarily under the influence of the process of globalization, thanks to which it is possible to learn more deeply the essence of legal norms, as well as to see their further perspective (Marks, 2019).

It is considered that the legal system at the national level is a system of law, which reflects the national cultural, political, and socio-economic peculiarities. Here the special importance of such a legal system is highlighted, where there are signs of individuality, unity of such a society (Santos, 2018).

Note that, according to domestic scientists, a significant reason for the cardinal change in the sphere of Ukrainian legislation was the fact that there was a significant conscious transition of society to the modern state of the law, aimed at European standards. This happened due to the orientation based on European models of legal consciousness (Drapohuz, 2015).

Therefore, the activity of states in the international arena and participation in solving certain international problems occurs due to the available political relations and the signing of international treaties (Aliyev, 2016).

In addition, in the theory of international law, the definition of the processes of harmonization, convergence, and approximation deserves special attention. These terms are closely related to the process of transformation of the legal system itself.

Thus, harmonization of law should be understood as the goal of unification and harmonization to a common understanding of the entire

legal framework and legal institutions. Convergence should be understood as a certain process of convergence or unification, which results in the convergence of law-making, law-conscious, and law-enforcement activities to harmonize the legal system (Mihajlenko, 2014).

According to the scholar Kresin, since the end of the twentieth century, there has been a transformation of society at the global level in the world. Due to this, there is an impact on all kinds of spheres of human social life. Such as spiritual, economic, political, and legal. Thus, one of the topical issues is the problem of transformation of legal norms of international law, which has an important connection with the process of integration of legal systems (Kresin, 2007).

Let us note that in the scientific legal space there are two types of transformations of international legal norms, namely:

- **General and special**

The essence of the General is the introduction in a certain state of a general norm, due to which the norms of international law have valid legal force within a given state. At the same time, the notion of special transformation should be understood as a process by which a state gives to certain international legal norms the force of domestic action, reproduced in a law or regulation, which is adapted to the norms of national legislation (Usenko, 2009).

Such transformations are carried out directly, that is, through the application of international legal norms within national law, for example, when expressed through rules established by the constitution or laws (Van Loo, 2021).

- **This form of embodiment of the rules of law is called direct transformation**

For example, Article 9 of the Constitution of Ukraine states that international agreements should be regarded as part of national legislation Constitution of Ukraine, 1996, Art. 9.

It should be noted that the direct effect of such norms is authorized at the level of domestic legislation. However, it should be said that there is another form of the above transformation - incorporation, providing that the norms of international law are considered part of the legislation of the country and are implemented in domestic law. Such an application is characteristic of such countries as Austria and Germany.

It should be noted that there is another type of transformation, as opposed to direct, namely indirect. That is when for the recognition of certain international legal norms, it is necessary to adopt or issue a national normative legal act - a law, a regulation, etc. For example, in France, this

practice is typical for the recognition of international agreements. Article 53 of the Constitution of the French Republic says that all financial or trade treaties of an international nature are considered ratified in the territory of France when the law is adopted at the national level and are considered valid after the adoption of the law and ratification (Haustova, 2016).

We consider it necessary to highlight the main significant changes (transformations) that occurred in Ukraine under the influence of international law norms on the example of several domestic branches of law.

But first, it should be noted that the Ukrainian modern legal system today is at the stage of development, which is called information, which means obtaining a new sustainable and coherent legal system. Global threats and challenges, as well as advantages, are taken into account here. At this stage, an important aspect is not only certain individual elements of the legal system and change in the legal system as a whole - the global transformation. That is changes in external and internal relations (Haustova, 2014).

Summarizing the above opinion, we should mention the available modernization in Ukraine, which is expressed in modern management schemes of social and legal life, the purpose of which is primarily the implementation of the principles of legality, justice, and equality in society. In the scientific community, certain elements of such modernization are distinguished.

We consider it necessary to consider them because of the importance of understanding the transformation and implementation of international law norms into domestic law. So, it is considered that the constituent elements of the development of legal modernization are:

1. Extraordinary development of law based on the constitutional principles of the rule of law and human rights.
2. The process of differentiation and renewal of Russian law through the configurations of economic development.
3. The process of humanization and rationalization of the sphere of criminal and penal law.
4. The process of optimization of judicial proceedings.
5. Development of juridical science and education.

It should be noted that an important aspect of the way of modernization of the Ukrainian legal system is considered the adoption of the Concept of legal policy, which is carried out with globalization, which provides for the transformation of certain international legal norms into Ukrainian legislation.

Such a Concept implies not only modernization of the legal system, but also the introduction of new communicative, integration relations, the establishment of an optimal balance in the sphere of international law relations, as well as transition from the post-Soviet system to a high level of legal consciousness, to a globalized legal system aimed at European and world postulates and principles of law, norms, and standards. Above all, it is also about protecting national interests and confronting big threats and challenges (Haustova, 2016).

Summarizing the above information on the importance of implementation of international law norms, in our opinion, it should be noted the consideration of specific examples of legal transformation in the national legal system, carried out under the influence of international law norms on the example of certain branches of domestic law.

As part of our study, we propose, first, to consider this issue regarding international implementation on the example of Ukrainian criminal law.

First of all, it should be noted that the most accurate definition, which interpreted the meaning of the concept of "implementation", is considered a certain process, which allows the implementation of international legal norms on the territory of the state, in the sphere of national law with its help and according to a certain procedure, as well as provided through organizational and legal activities of state bodies and aimed at the actual implementation of international obligations of the state (Batyr', 2014).

The above Law of Ukraine "On International Treaties of Ukraine" establishes that international treaties of Ukraine are part of the national legislation, subject to ratification by the legislative body. However, here a number of questions of a more detailed and technical nature arise.

Research of such interpretation was conducted by scientist Bronevytska, who in her work analyzed more than seventy international agreements and determined that almost all agreements are not self-executing. That is, it means that the provisions regarding international agreements, which are enshrined in domestic laws on the binding nature of their implementation in Ukraine, in practice cannot be unambiguously implemented due to certain technical problems. For example, it is difficult to understand that certain norms of international law establishing criminal liability for a certain list of crimes can be implemented and act without implementing such norms in the Ukrainian criminal code (Bronevytska and Serkevych, 2020).

Thus, to recognize the acts or omissions recommended in international treaties, it is necessary to make certain changes in the criminal procedure legislation and to assign a measure and type of punishment for such a crime in the domestic law, because none of the international treaties under consideration indicates a specific measure. punishment. It is believed that this should be the prerogative of each state individually (Piddubna, 2016).

A similar opinion on this issue is held by scholar Sharmar, who notes that when implementing the implementation of certain provisions of the acts of international legal nature, the domestic legislator does not necessarily take into account the specifics of Ukrainian legislation on criminal liability. With this in mind, we can give the following example.

In 2006, namely on October 18, Ukraine ratified the Criminal Convention on Combating Corruption, which was adopted back in 1999 in Strasbourg. Thus, Article 3 of this Convention establishes that parties, i.e., countries must take certain legislative and other measures that may be important and necessary to introduce in their domestic legislation criminal liability for the intentional commission or receipt by various officials of any undue advantage, either directly or indirectly for them personally or for other persons. It can also be acceptance of promise or offer for granting such advantage carried out for non-performance or execution of their official powers (Criminal Law Convention On Corruption, 1999).

It should be noted that in Ukraine the legislator was guided by this very Convention when making amendments to the current Criminal Code of Ukraine (hereinafter - CC). But here the changes were made not only for receiving or giving but also for offering or promising unlawful benefits, as well as for promising or offering any employee of state enterprises, institutions, or organizations.

According to scholars who have studied this issue, in particular, Sharmar, Bronevytska, such wording in the current Criminal Code is inaccurate. They do not agree with this wording of such norms of law about the criminalization of promises or offer or their acceptance to provide an undue benefit. These norms are enshrined in Articles 354, 368, 369, 370 of the current Criminal Code.

The reason for such opinion is considered the fact that committing the above-mentioned acts can only speak about a certain intention or opinion to receive an unlawful benefit because this does not speak about the corpus delicti provided by Article 11 of the said Code (Criminal Code of Ukraine, 2001, art. 11).

However, in the case where individuals have come to a certain consensus on the conditions and manner of implementation of their intentions regarding the actions to provide or receive an undue benefit, only then can such actions be understood as preparation for a crime. Unfortunately, in practice, it is almost impossible to take measures to prove or disprove such arrangements.

In addition, speaking of similar inconsistencies, it should be mentioned that a similar situation with the same implementation of international criminal law has also developed with the concept of bribery. It is used in some articles of the Criminal Code of Ukraine. As an interpretation, it is

a method of committing a crime (Article 386 of the CC), a component of a socially dangerous act (Article 370 of the CC) or as a collective concept in the content of which different socially dangerous acts are included (Articles 160, 354, 368).

Let us note that here we can conclude that the Ukrainian legislative body has not reproduced a unified approach to the interpretation of the concept of bribery in these articles of the Code. That is why to date there remains an open concept regarding such term, because it is without indication of the actions covered by such content (Zahynei, 2015).

Studying the problems of legal transformation of the norms of international law in the sphere of the criminal law of Ukraine, we should also mention the status of such implementation of borrowed norms in the civil legislation of Ukraine as well.

As already noted, part of the domestic system of law are norms, that is, rules of conduct established by the state in the face of the legislature. Such norms are expressed primarily in legislative acts. At the same time, norms of international civil law are considered part of the system of such institutions and must be established together on the initiative of several states. That is why it is impossible to recognize an international treaty as a source of domestic law (Treskov, 2020; Panova *et al.,* 2021).

As is known, treaties, which are international in nature, are considered to take precedence over national legislation. This regulation of norms marks the general direction of harmonization of international treaties with domestic legislation, the prospect of which should be the unification of norms of the civil law sector.

As in the criminal branch, the issue of conflict of such similar legal norms arises here as well (Stepanenko, 2018; Safonchyk *et al.,* 2021).

So, the general rule is that if an international agreement has been concluded earlier, then the domestic law will not come into force at all or should even be repealed (United nations convention on contracts for the international sale of good, 2010).

In the case of a domestic statutory act that has been previously enacted - then such an act should become null and void as soon as the international treaty enters into legal force. This is where the norms of action of the law in time, established by Article 5 of the Civil Code of Ukraine should be used (Mykhailiuk, 2019).

Note that international civil agreements should be applied only in relations, the parties of which are persons who are citizens or legal entities of certain parties to the treaty.

Note that international agreements are included in civil legal relations if the agreement itself does not establish the need to issue a domestic law to apply such an agreement (Ivanova, 2021).

For example, let us note that the UN Convention of 1980, which regulates relations under contracts for the international sale of goods, should be subject to the application as a relevant source of domestic law in accordance with its scope, namely under such international contracts (Kvitka *et al*., 2021).

Thus, it should be noted that in practice there are two types of such international agreements: containing norms of direct action and norms that are aimed only at mandatory measures of the state regarding the implementation, i.e., implementation of such norms of international law into domestic law.

For example, we can mention the Law on bills of exchange and promissory notes, as well as the Paris Convention for the protection of industrial property of 1883 (Hamid Sitti Harlina, 2018).

In the norms of this act, it is noted that to provide registration of trademarks should be introduced norms in the national law of the participating countries. On this basis, Ukraine adopted the Law "On Protection of Rights to Marks for Goods and Services".

Measures on the priority of international legal norms in practice are not applied to all international civil agreements. For example, the Berne Convention for the Protection of Literary and Artistic Works defines that the terms of protection of copyright for member countries may be regulated in the following way: such countries are given the right to determine the terms of protection of rights, exceeding the terms defined in the Convention (Mykhailiuk, 2019).

Thus, it should be noted that in the civil sphere international agreements have experienced great influence precisely because of the transformation of international civil law norms through implementation in Ukrainian law. That is why they become a part of the sources of the Ukrainian legal system. However, this applies to those issues, if international agreements of Ukraine established rules that are not defined in the civil legislation.

Conclusions

Having studied the theoretical and normative-legal foreign and domestic basis in the sphere of influence of norms of international law between states, the following conclusions can be made, namely, that the Ukrainian modern legal system today is at the stage of development, which is called

information. It should be mentioned about the available modernization in Ukraine, which is expressed in modern management schemes of social and legal life, the purpose of which is primarily the implementation of the principles of legality, justice, and equality in society.

An important aspect of the way of modernization of the Ukrainian legal system is considered the adoption of the Concept of legal policy, which is carried out with globalization, which provides for the transformation of certain international legal norms in the Ukrainian legislation. Such a concept involves not only the modernization of the legal system but also the introduction of new communication, integration ties, the establishment of optimal balance in the relations of international law, as well as the transition from the post-Soviet system to a high level of legal consciousness.

In addition, the current problems of implementation of international law in the criminal law of Ukraine are also clarified. It means, in particular, that to be more detailed and informative, the legislative body of Ukraine should make certain changes in the criminal procedural legislation and expand and interpret certain aspects of international norms that do not detail the regulation of criminal relations.

It was also found that, unfortunately, when implementing certain provisions of acts of international legal nature, the domestic legislator does not necessarily take into account the specifics of Ukrainian legislation on criminal liability.

In the civil sphere, international agreements have experienced a great influence precisely because of the transformation of norms of international civil law through implementation to Ukrainian legislation. That is why they become part of the sources of the Ukrainian legal system. However, this refers to those issues if international agreements of Ukraine established rules not defined in civil legislation.

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Review of the nature of Iran's foreign policy in its constitution and its comparative study with other countries

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Abstract

Iran's constitution, which was drafted after the victory of the Islamic Revolution, was mainly influenced by Islamic ideology. In this constitution, foreign policy is one of the categories that is well considered and taking a text of a revolutionary nature and influenced by the ideological atmosphere of the regime, aims to draw up a special strategy in the foreign relations of the Persian country. Therefore, the purpose of reviewing the foundations and structure of the foreign policy of the Republic of Iran and, at the same time, explaining how it develops at the stage of approval and revision of its constitution prevails. In addition, a comparative study of Iran's foreign policy with some countries is carried out, among them: the United States, France, Turkey, and India. The method used was the documentary and was based on the interpretation of textual sources with descriptive and comparative techniques, together with the analysis of the content of the constitution. The findings show that Iran's foreign policy after the Islamic Revolution is based on Islamic principles and seeks interaction with all countries through friendly relations.

Keywords: foreign policy; constitution of Iran; compared right; political system; international relations.

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Revisión de la naturaleza de la política exterior de Irán en su constitución y su estudio comparativo con otros países

Resumen

La constitución de Irán, que fue redactada después de la victoria de la Revolución Islámica, estuvo influenciada principalmente por la ideología islámica. En esta constitución, la política exterior es una de las categorías que está bien considerada y, como un texto de naturaleza revolucionaria e influenciada por la atmósfera ideológica del régimen, pretende trazar una estrategia especial en las relaciones exteriores del país persa. Por lo tanto, en esta investigación prevalece el propósito de revisar los fundamentos y la estructura de la política exterior de la República de Irán y, al mismo tiempo, explicar cómo se desarrolla en la etapa de aprobación y revisión de su constitución. Además, se realiza un estudio comparativo de la política exterior de Irán con algunos países, entre ellos: Estados Unidos, Francia, Turquía e India. El método utilizado fue el documental y se basó en la interpretación de las fuentes textuales con técnicas descriptivas y comparativas, junto al análisis de contenido de la constitución. Los hallazgos muestran que la política exterior de Irán después de la Revolución Islámica se sustenta en los principios islámicos y busca la interacción con todos los países mediante relaciones amistosas.

Palabras clave: política exterior; constitución de Irán; derecho comparado; sistema político; relacione internacionales.

Introduction

On the one hand, constitutions play effective and determining role in delineation of political, social, economic, cultural, military and security plans and policies and on the other hand, since constitutions originate from culture, rules, regulations and intellectual events in any society, they try to define and compile local and foreign policy of the country based on the dominant discourse, governing policies and political strategies. In Constitution of Islamic Republic of Iran as the major and the most important law of the country originating from revolutionary-Islamic discourse, foreign policy is one of the categories which have attracted attention considerably. Allocation of a chapter of Constitution to foreign policy and other principles which have considered foreign policy considerably can explain framework of foreign policy and executive structure and behavioral mechanism of its agencies.

Some concepts such as happiness of human, negation of dominance and submission, defense of Muslims' rights and support of the oppressed in the world are of the principles which indicate deep effect of Islamic ideology and revolutionary approach to principles of foreign policy and formation of its goals. Specifically, in such system, constitution is regarded as the most important treaty of society. These principles are regarded as the most important source for recognition of goals, intentions and rules of foreign policy. Special attention of Constitution of Islamic Republic of Iran in dealing with category of foreign policy and delineating mental space affected by revolutionary conditions and doctrine aspect of the system in foreign policy are the main theme of the paper.

This writing seeks to answer this question: what place category of foreign policy has in constitutions of the studied countries. What effect do ideal attitude and doctrinal values of Islamic system have on importance of place of foreign policy in Constitution of Islamic Republic of Iran? Can this distinctive role of foreign policy be found in Constitution of Islamic Republic of Iran? In this research, hypothesis of the writers is that Constitution of Islamic Republic of Iran affected by an idealistic approach and based on doctrinal values and revolutionary space compared with the studied countries have given main role and place to foreign policy.

1. Methods

Utilization of comparative studies, reference to the firsthand sources such as use of text of the Constitution of Islamic Republic of Iran (as the most important source and document) and regarding Islamic Republic of Iran in addition to text of the constitution, utilization of the negotiations of the parliament in stage of approval and revision and also some secondhand sources have been considered and analyzed.

1.1. Selection of the compared countries

The compared countries have been selected based on the following criteria:

1. The compared countries differ in different geographical points and political systems. Therefore, Iranian neighbors (Turkey), Europe (France), America (USA) and subcontinent (India) have been considered.
2. The compared countries achieve relative and desirable degree of efficiency and success in legislation and policymaking has been regarded as the models of other countries such as France and USA.
3. The compared countries have suitable regional place in the field of

foreign policy such as Turkey and India.

4. Considering the latest experiences and events, they should be included in the latest constitutions enacted in the world.

Theoretical issues

1.2. Agency-Structure interactive method

Structuring theory which was raised by Anthony Giddens delineates an effective approach in interpretation of these two concepts in interaction between structure-agency. According to Anthony Giddens, it is improper to explain social phenomena using only agencies irrespective of role and function of structures or with emphasis on institutions and structures without considering approaches and motives of the agencies.

In other words, social institutions and phenomena in broad interactive process have become meaningful and explainable among structures and agencies (Adler, 2005). According to him, structures and agencies are inseparable and both factors should be considered in analysis of social changes and processes. Therefore, as independent agencies of social structures cannot act and survive, structures are dependent on action of agencies in social structures. As a result, social action can be interpreted and explained in interaction of two concepts of structure-agency (Held and Mcgrew, 2007).

Social or political structures continue only due to restrictions which they have on agencies or opportunities with which they provide them. Therefore, it is meaningless to imagine a structure without the least brief image of agency who may be affected by it (limited or empowered) (Marsh and Stoker, 2005).

Structures include a set of factors which provide conditions for activity of agencies in social environment. On the one hand, structures are regarded as social reality against actors and make action systematic or limit it and create distinctive models (Wendt, 2005). Agencies mean the units which are able to make decision and act in any environment. They may be individuals, groups and social units. Agencies may act based on conscious intentions or based on behavioral patterns (Hill, 2008).

Decision is made in foreign policy through interactive process among actors and each of them is in broad range of different structures. Interaction between them is a dynamic process which results in permanent change of structures and agencies (Hill, 2008). Ignorance of environmental and structural factors and ignorance of the characteristics of agencies can achieve realistic understanding of social action of states but study of behavior of foreign policy should be conducted based on interaction between structuresand agencies and behavior of states in the field of foreign policy

is explained considering characteristics of the agencies who have power of choice inside the structural domains (Sotoodeh, 2007).

1.3. Foreign policy in Constitution and its supplement

Some theorists of foreign policy have considered attention of Constitution of Islamic Republic of Iran to category of foreign policy as a positive point in evaluation of the Constitution and emphasize on it (Nakhaei, 1997) and regard it as resulting from global mission of Islamic revolution in realization of international goals. At the same time, they divert this criticism to Constitution and the said Constitution has not paid necessary attention to category of foreign policy (Mohammdi, 2007; Nakhaei, 1997).

In a general definition, Constitution can be regarded as the main rules and principles in any society which define political relations of people with government and institutions and specify quality of distribution and application of power (Hill, 2004). On this basis, some researchers evaluate special attention to foreign policy in Constitution of Islamic Republic of Iran as unconventional, excessively broad, hard and limiting for scope of powers and action of the agencies of foreign policy and negligent of time and space elements.

Specifically, the reasons for limited attention of the constitutionalists to foreign policy in enacted principles of Constitution are origin, nature and essence of constitutional revolution like anti-colonial movement. Lack of codified laws and regulations in society which specified rights of nation and scope of powers of the governing body directed Iran society to legal positivism and tendency to make change in political structure and social conditions of the country and finally will of Iranian nation in codification of Constitution was manifested as the most important consequence of constitutional movement (Ravandi, 1978).

Therefore, despotism and dictatorship as the most stable characteristic and component of power construction in Iran on the one hand and lack of sovereignty of law caused main core of thought and ideology of constitutional movement in limitation of kingdom in the framework of law (MolaeeTavani, 2002; Nadooshan and ZareeMamoudAbadi, 2005; Zerang, 2005).

The constitutional movement and liberalistic movement of Iranian people provided opportunity for birth and culture of new thoughts and experiences which result in codification of Constitution and determination of nation's rights as the most important achievement. In the book Iran and its place among nations, the most important reason for codification of the constitution is change in political structure of Iran under aegis of law and vindication of nation's rights, therefore, main duty of the first assembly is to draft Constitution to limit power of king, determine his

rights and responsibilities and role of the legislative power in supervision and enactment of the related laws has been emphasized (Mafinezam and Mehrabi, 2008).

Therefore, attention to and emphasis on foreign policy have been less preferred by the constitutionalists based on such role and function because reform of absolute political structure of the country and responsiveness of the political system to people will block the way of any stranger and domination of the foreigners according to the constitutionalists.

At the end, it should be acknowledged that Constitution of Islamic Republic of Iran affected by Islamic ideology highly emphasizes on role of foreign policy in realization of ideal goals while Constitution lacks ideological attitude and has paid attention to foreign policy in realization of the local policy and has emphasized on vindication of rights of nation and sovereignty of law in reform of political system of Iran and finally prevention of domination of the strangers in political affairs of the country.

Goals of the foreign policy of Iran are studied based on the Constitution and its supplement is studied based on three cases:

2. Emphasis on supervisory role of the National Consultative Assembly

Five principles 22, 23, 24, 25 and 26 highly emphasize on importance of place of the assembly in supervision on performance of the governing body and the reason is political conditions of Iran and influence of foreign colony in all political and economic positions of the country.

2.1. Limitation of powers of Shah in granting concession to other states

One of the important factors of constitutional movement is increasing despotism of the governing body and mainly king. This case can be found in granting expansive concessions to the foreign states that vitiated rights of the nation.

Therefore, the assembly tried to limit power of shah by supervising on performance of sovereignty in granting concession to foreign states on the one hand and prevented from access and influence of the strangers in political and economic affairs of the country on the other hand.

2.2. Limitation for the military

By virtue of principle 104, law defines deployment. Duties and rights of the regime authorities and promotion of positions are governed by law.

The reason is limitation of foreign armies and prevention from interference in military affairs of Iran. Therefore, principle 106 expressly has rejected employment of the foreign armies and stipulates that their residence should be confirmed by law.

2.3. Foreign policy in Constitution of Islamic Republic of Iran

Of the most important consequences of revolutions particularly ideological revolutions are emergence and formation of a broad set of organized attitudes and methods for management of society which try to present policies based on their ideology based on values and norms. In this area, gift of Islamic Revolution of Iran was to mention values and ideals which bound the revolutionists to present it as a new pattern of Islamic ideology.

They believed that since revolution of Iran is an Islamic movement, its laws should be based on Islamic laws. Therefore, mission of the Constitution is to objectify doctrinal fields of movement in intellectual positions and Islamic worldview based on its introduction. In such space, the experts who codified the constitution tried to highlight place of foreign policy in Constitution of Islamic Republic of Iran, therefore, foreign policy of Iran in text of new Constitution in 1979 has been affected by doctrinal values of charismatic leadership of the Revolution and social armed forces and discourse in Revolution and dependent intellectual events.

2.4. Foreign policy in description of negotiations of the Assembly and final investigation of the Constitution

Constitution of Islamic Republic of Iran including 175 principles was codified and enacted in 1979 in Assembly of Experts.

Efforts of the experts of Constitutionwere to design newly established Islamic system, inspire intellectual beliefs aligned with Islamic ideology and design role, function and duties of Islamic revolution and content of political system of Iran in global field.

Codification of the Constitution meant realization of ideological military demands which defined and interpreted its goals beyond geographical borders. According to Islam teachings, when a government with Islamic identity is created in a part of Islamic land, it should be responsible for political, social, economic, ethical, and spiritual conditions of all Muslims since start of formation.

It means that it should help Muslims and create a condition with help of each other to possess Islamic system and when these systems became Islamic, formation of a large global political system was natural and true under auspices of Islam and if it is necessary, global organization

of Muslims can be established like UN. Therefore, goals of Constitution should be presentation of a global pattern which includes and implies social and Islamic welfare for all Muslim nations in addition to Iran and doesn't provide opportunity for showing power of the international imperialists.

Based on this goal, they didn't accept any of the international laws. Experts of the Constitution affected by excitement of the first months of victory of Islamic Revolution and with feeling of duty toward the entire world regarded Islamic Revolution of Iran as the second global event after emergence of Islam and highly emphasized on global nature of the Constitution.

They also acknowledged that they should determine future of humanity under aegis of principles of Constitution and believed that Constitution of Islamic Republic will be supported by nations and countries which are revolving and they can be shared as a perfect pattern to the entire world (Mafinezam and Mehrabi, 2008). They imagined that they should rouse hope of humane and honorable life in humans based on principles and fundamentals of Islam and deepen and give meaning to life of humans (Mafinezam and Mehrabi, 2008). Therefore, all nations of the world from east to west wait to watch new achievement of the revolutionists (Mafinezam and Mehrabi, 2008).

Experts of Constitution prefer limitation of the global organization of the Muslims and Iranian support of the revolutions based on global right and help the oppressed nations in text of the Constitution and regarded it as a step-in globalization of Constitution (Hashemi, 2005). They believe that the first principles of Constitution should be as follows:

Principle 1- Islamic Republic of Iran is government of the believers. Principle 2 –Muslim nation of Iran is inseparable unit based on the holy verse of …, principle 3- believers all over the world are members of the united nation and have common religion, object of worship, scripture, prophet and single homeland and equal rights and common duties, principle 4-Iran is an inseparable unit and is an integral part of our homeland is our nation or Daroleslam (Hosseini, 2005).

2.5. Direct approach to foreign policy

Legislators of the Constitution confirmed special place of this category in major considerations of Islamic Republic of Iran by allocating chapter 10 of the Constitution to foreign policy. Four principles 152, 153, 154 and 155 of this chapter emphasize on broad scope of goals, intentions and rules of the foreign policy of Islamic Republic of Iran.

The said principles affected by doctrinal nature of Islamic system of Iran indicate policies of Islamic Republic of Iran in presentation of new

behavioral patterns in executive structure of the foreign policy. Chapter 10 of the Constitution indicates will of the revolutionists in generalization of Islamic-revolutionary ideology in the field of foreign policy. In the draft of the constitution, a chapter entitled foreign policy had not been predicted but experts of the Constitution emphasized on importance of place of foreign policy and believed that law should be such that the international imperialists cannot show power (negotiations of the assembly (Hosseini, 2005).

Revision of the principles inserted in this chapter leads to more accurate recognition of the strategies and goals of the foreign policy of Islamic Republic of Iran.

Principle 152: negation of any dominance and submission, independency, territorial integrity, defense of the Muslims' rights, no obligation toward the authoritarian powers and mutual peaceful relations with non-combatant states. This principle is the main essence of the foreign policy of Islamic Republic. In addition to independency and territorial integrity of the country, which is based on realistic attitude, other issues manifest idealism of Islamic system.

To realize goals and ideal values of Islamic Republic, experts of the Constitution bound Islamic Republic to defend rights of the Muslims as representative of the Islamic government by resorting to Islamic teachings. They believed that this responsibility resulted from ideology of Islamic revolution. Therefore, Islamic Republic must accept multilateral obligations toward the Muslims and have emphasized those foreign relations of Iran should be based on relation with nations (Khalili, 2008).

Principle 153: prohibition to conclude any contract which leads to dominance of the strangers on aspects of the country.

Principle 154: emphasis on happiness of human as ideal of Islamic Republic of Iran , freedom and government of the truth and justice as right of all people of the world , avoiding interfering in internal affairs of other nations and supporting campaigns of the oppressed against oppressors of the world. The experts of the Constitution affected by conditions of victory of Revolution and an idealistic space bound Islamic Republic government to support true global campaigns particularly Islamic revolutions and emphasized that this issue should be expressed in the constitution and should have sanction (Khalili, 2008) because Islamic system in any part of the world is realized according to Islamic teachings and creates a government of which responsibility is not limited and is responsible toward all humans and particularly all Muslims.

Therefore, obligation and responsibility toward other Muslims of the world are regarded as characteristics of the Islamic governments based on these teachings but it doesn't mean that Islamic government intends to

expand its domain but means that it should help the Muslims and provide the opportunity for creation of Islamic government in these countries (Khalili, 2008).

Principle 155: granting asylum by Iran to the political asylums in case these persons are not traitors and felonies according to laws of Iran is another aspect of the considerations of foreign policy of the Islamic Republic in the Constitution.

Three main characteristics can be considered for foreign policy of Iran based on policies of the Constitution.

3. Limitation for agencies

Constitutions lack long-term goals in structure of foreign policy but the Constitution of Islamic Republic of Iran search for long-term goals in foreign policy. This imposes limitations for agencies. Delineation of space of foreign policy and determination of executive policies, expression of goals and determining movement of the agencies limit them in this field.

Constitution directs statesmen and agencies to realization of ideological goals of the system by determining long-term and unchanging goals in the field of foreign policy while there are changes in international system based on conditions and circumstances so that the states cannot be inflexible toward these changes but foreign policy of Iran is necessary based on strategies of the constitution without flexibility.

3.1. Obligation for the future generations

Provisions of the principles of Constitution and ideological attitudes toward it show that there are definite goals for foreign policy of the Islamic Republic. Considerations such as support of the oppressed against the oppressors, defending rights of the oppressors, defending rights of Muslims, unity of Islamic nations, effort to realize unity of Islam world in all fields and other issues indicate that these principles should be criterion for movement of all generations as they oblige the future generations in advance.

3.2. Pessimistic attitude toward the outside world:

Based on ideology of the Islamic system and attitude of the experts of the Constitution, the world is divided into two parts: self-otherness.

In principles inserted in the Constitution, literature of negation has special place. Repeated application of the words such as despotism, dominance of strangers, and the western world shows that Islamic Republic looks at the outside world with pessimistic look. This approach governs

many principles of the Constitution. In all political, economic, cultural and military fields, the Constitution delineates the world from the self and otherness viewpoint. In fact, the Constitution has given limited range of facilities and activities to the agencies and executives through expansive cultural otherness. Such orientation and principles result in production of conspiratorial literature about the outside world and international system.

3.3. Studying negotiations in Council for Revision of the Constitution

Since needs and circumstances are changed due to change and dynamicity of society and societies affected by these changes require new conditions, therefore, the constitutions move by accepting reform and change in alignment with new conditions. In the constitutions, an article entitled review of the constitution has dealt with this important case so that they can enact and execute new laws based on social and political circumstances.

In 1990, the Constitution of the Republic of Iran was revised and two new principles, namely Articles 176 and 177 were added to it. Therefore, the Iranian constitution now has 14 chapters and 177 principles (Hashemi, 2005).

Principle 110: this principle has vested the Leadership with expansive powers but more powers were delegated to the Leader in revision of the constitution in the fields which can be effective in foreign policy. These powers include:

1-2-1 the right to declare war and peace and to mobilize forces

1-2-2- The right to determine the general policies of the system in the Islamic Republic of Iran

1-2-3- The right to monitor the proper implementation of the general policies of the system

1-2-4- Solving problems of the system through State Exigency Council.

Based on the doctrinal attitude, the Islamic government should be led by the jurisprudent and according to principle 109 of the Constitution; he should be qualified for leadership which has been mentioned in this principle. Experts of the Constitution emphasized that if the Constitution is not based on the holy book and tradition and the issue of guardianship of jurist consult is not considered, it will not be enacted by the experts but issue of guardianship of jurist consult should be regarded as basis of action in the Constitution of the Islamic Republic (Council for Revision of the Constitution, 107).

Principle 128: ambassadors are appointed as suggested by the minister of the foreign affairs and enacted by the president. The president has signed credential of ambassadors and accepts credential of ambassadors of other countries.

Principle 176: the Supreme National Security Council presided by the president has the following duties to provide national benefits, guard Islamic Revolution, territorial integrity and national sovereignty:

1. Determining defensive –security policies in general policies determined by the Leadership
2. coordinating political, informative, social, cultural, and economic activities regarding general defensive –security strategies.
3. Utilizing material and spiritual facilities for confronting with local and foreign threats

Experts of the Constitution in Council for Revision acknowledged that Supreme National Security Council can solve the main problem i.e., national security which was lacking in the constitution by a new combination which has been predicted in the constitution in leadership section (Council for Revision of the Constitution, 1147).

Table 1- Principles of the constitution regarding foreign policy 1-3

(Source: Constitution of the Islamic Republic of Iran,1990)

Confirmed subjects	Foreign policy principles	Principle No.	Chapter or title	Row
Independence , responsiveness	Negation of oppression and submissiveness, independence	Principle 2, paragraphs b&c	Chapter 1- general PRINCIPLES	1
Nationalism, Cosmopolitanism, idealism	Rejection of colonialism, prevention from influence of the strangers , keeping independency, obligation and support of the oppressed	Principle 3, paragraphs 3,5,11,13,16	Chapter 1- general PRINCIPLES	2
Idealism, nationalism	Unity of Islamic nations , political – economic unity of the Islam world	Principle 11	Chapter 1- general PRINCIPLES	3

Responsiveness	Political independence , self-sufficiency	Principle 43	Chapter 4- economy and financial affairs	4
Responsiveness	Importance of the assembly	Principle 77	Chapter 6- the legislative power	5
Responsiveness	Prohibition to change the borderlines	Principle 78	Chapter 6- the legislative power	6
Responsiveness	Borrowing and lending subject to enactment of the assembly	Principle 80	Chapter 6- the legislative power	7
Responsiveness, independence , xenophobia	Prohibiting to grant concession for establishment of the company to the foreigners	Principle 81	Chapter 6- the legislative power	8
Islamic interest of responsiveness	Prohibiting to employ foreign experts	Principle 82	Chapter 6- the legislative power	9
Isalmistic	Granting right to declare war, peace and mobilize forces to the leader	Principle 110	Chapter 8-leadership or council of leadership	10
Determining executive structure	Duties of the president	Principle 125	Chapter 9-Exeecutive power	11
Determining executive structure	Appointment and acceptance of ambassador	Principle 128	Chapter 9-Exeecutive power	12
Independence , responsiveness, Xenophobia	No acceptance foreigners in army	Principle 145	Chapter 9-Exeecutive power	13
Responsiveness, independence	No establishment of foreign military base in the country	Principle 146	Chapter 9-Exeecutive power	14
Realism. Nationality, idealism	Negation of dominance and submission, defending Muslims , lack of obligation	Principle 152	Chapter 10- foreign policy	15
Responsiveness	Prohibiting contract resulting in dominance of the strangers on dignities of the country	Principle 153	Chapter 10- foreign policy	16

Idealism	Happiness of human , government of truth and justice for all people of the world, supporting campaigns of the oppressed	Principle 154	Chapter 10- foreign policy	17
	Granting asylum to political asylums	Principle 155	Chapter 10- foreign policy	18
Realism , national interests	National benefits , security, defending territorial integrity	Principle 176	Chapter 13- Supreme National Security Council	19

Praise of the authors.

4. Place of foreign policy in constitution of countries

Taking principles of foreign policy from constitutions of the countries can indicate characteristics affecting executive structures of the countries. Therefore, this part of the paper first refers to place of foreign policy in constitutions of America, France, India, Turkey and then studies main and effective points relating to foreign policy of each country and finally studies condition of foreign policy of Iran in constitution compared with other constitutions.

4.1 USA

The US Constitution, adopted in 1789, is considered to be the oldest codified constitution and, with 26 amendments, has survived and had profound implications for the modern world constitutions alongside the British and French constitutions. The United States Constitution contains 7 principles and 26 amendments (Hosseini, 2020).

The following principles include cases relating to foreign policy of this country. These principles include:

The first principle, Section 8 of paragraph 3: legislating regulations to commerce with foreign countries and different states is one of the powers of the congress.

The first principle, section 10: prohibition of accession to a treaty, union, or confederation for the states.

First principle, section 8, paragraph 2: no state is not entitled to enact tariff or customs duties on import and export without agreement of the congress unless in necessary cases.

First principle, section 8, paragraph 3: states have no signatory right for the agreement or treaty with foreign powers and cannot make war.

Second principle, section 2, and paragraph 2: treaties are concluded by the president with consultation and agreement of Senate under special conditions. Ambassadors are appointed by the president.

Second principle, section 3: acceptance of representatives and ambassadors by the president

Principle 3, section 2: supervision on the concluded treaties, claims relating to ambassadors and the disputes between one state and citizens of another state or the disputes in which USA is one of the parties to the dispute shall be done by the judiciary and regarded as scope of powers of the judiciary.

4.2. France

Constitution of France relating to 4 October 1958 or the constitution of the fifth republic and the subsequent amendments. It has been mentioned in introduction of the constitution of this country that France formally announces its adherence to human rights and national sovereignty principles as specified in declaration 1789 and confirmed and completed in introduction of the constitution 1946. The said two texts are regarded as a part of the constitution of France.

The constitution of France comprises of 17 chapters and 93 principles among which principles 90 to 93 have been abolished. The principles which relate to foreign policy:

Second chapter, principle 11: the president proposed by the state is able to hold a referendum on enactment of the treaties which have effect on performance of the institutions without contradiction with the constitution.

Chapter Two Article 13: The President has the right to appoint ambassadors and special representatives

Chapter Two, Principle14: The President receives the credentials of the ambassadors and envoys of foreign countries

Chapter Two, Principle 16: The President Takes the Necessary Measures When the Institutions of the Republic, National Independence, Territorial Integrity, or the Fulfillment of International Obligations Are Seriously Threatened

Chapter 5 Article 35: The declaration of war requires the permission of Parliament

Chapter 6, principle 52: negotiation about treaties and their signature shall be done by the president and he should be notified of the negotiations

which are made to conclude international agreement and need no signature of the president.

Chapter 6, principle 53: confirmation of the peace treaties, commercial treaties and agreements relating to international organizations which are enforceable in case of enactment of law.

Chapter 6, principle 54: in case council of constitution declares that an international obligation entails an article contradictory to the constructional law, it is possible to enact or confirm it after revision of the constitution.

Chapter 6, principle 55: preference of the treaties or agreements which have been signed and enacted legally to local laws provided that the opposing party is bound to execute the treaties.

Chapter 14, principle 88: the republic can conclude treaties with the states with accession to treaty to expand its civilization can conclude treaties.

4.3. India

Constitution of India was codified by constituent's assembly in December 1946 and formalized and enforced on 26 January 1950. Codifiers of the Indian constitution utilized experiences of other countries while being affected by the British government. The constitution comprised of 151 principles.

The principles relating to foreign policy:

Principle 3 regarding establishment of new states or separation of borders from any state, change of domains or name of states , unity of two or more states, unity of each border with any part of a state , increase or decrease of domains , parliament supervises through law.

Principle 18- none of the Indian citizens should accept any title from the foreign state without agreement of the president.

Principle 19: emphasis on friendly relations with foreign states as one of the essential rights of people

Principle 51: regarding international peace and security, states make effort to expand international peace and security, keep fair and respectful communication among the nations, increate validly of the international law, bind the parties to perform the treaties and limit international disputes.

Principle 102: members of the parliament will be incapacitated optionally in case of accepting nationality of the foreign state.

Article 131: The Supreme Court has the right to judge between India and other states. This court oversees the conclusion of treaties. This principle

states that treaties that are concluded before the adoption of the constitution will not be concluded

Principle 138: the Supreme Court has right of judgment between Indian government and another state in conclusion of the contract. Right of judgment of the Supreme Court should be enacted by the parliament.

4.4. Turkey

The first constitution of this country was enacted in 1876. The said constitution was abolished in 1878 and enforced again in 1908.

The constitution of this country seriously changed through reforms of Ataturk since 1920s. The latest changes of the constitution of Turkey were made in 2004 to pave the way for accession of Turkey to European Union. The constitution of this country comprised of 7 sections and 176 principles. The principles relating to category of foreign policy include:

Principle 5: goals and duties of the state include: keeping independency and territorial integrity and making effort to remove political, social and economic barriers which limit essential rights and freedoms.

Principle 16: essential rights and freedoms of the strangers may be limited by virtue of law according to international law.

Principle 69, paragraph 10: political parties which receive financial assistance from foreign states, international institutes and persons or organizations will be permanently dissolved.

Principle 74: citizens and foreign residents are entitled to request hearing for their complaints considering principle of reciprocity before the competent authorities and great national assembly of Turkey.

Conclusion

The constitution sets out the main policies, goals, and programs of a country's foreign policy. For this reason, the constitution of any country is the most authoritative official document and legal and political source in all political systems of the world and is of great importance. The constitution of the Islamic Republic of Iran was written when the revolutionaries tried to draw the constitution based on Islamic ideology and in a revolutionary atmosphere.

Therefore, it achieved a high position in achieving the final goals of the Islamic Republic and directing its commitments and foreign policy. According to the agency-structure theory, the interaction between structures and institutions is an important factor in analyzing and explaining social and

political changes and processes. This theory gives a clearer understanding of the foreign policy of the Islamic Republic of Iran. Since the Constitution of the Islamic Republic of Iran as the first and main source in recognizing and analyzing Iran's foreign policy in the revolutionary and ideological conditions of the Islamic system on the one hand and the attitude of experts in drawing strategies and goals of foreign policy.

On the other hand, in this study, the constitutions of five countries, Iran, the United States, France, India and Turkey, were examined and an attempt was made to discuss the place of foreign policy in the constitutions of the mentioned countries. The constitutions of the studied countries, with a realistic approach and without anticipation of long-term goals, have dealt with the executive structure and foreign policy in the principles related to foreign policy and has put the preservation of the current situation on their agenda.

The Islamic Republic of Iran has idealistic and challenging goals for the current situation in the field of international system in its foreign policy goals and the Constitution of the Islamic Republic of Iran among the constitutions of the studied countries has assigned more principles to foreign policy and these results are research hypotheses. Proves. Some of the principles enshrined in the Constitution of the Islamic Republic of Iran are a reaction to the strategies and political and economic relations of Iran in the Pahlavi period with other governments, especially Western governments. Therefore, the greatest emphasis is on rejecting the goals and plans of the previous regime.

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Material and intangible values subject to compensation to a victim of crime in criminal proceedings of the Russian Federation and the Socialist Republic of Vietnam

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Abstract

Using the analytical method, the article discusses issues related to compensation for property damage, moral damage and damage to business reputation caused by a criminal act. To understand the essence of property damage, the following signs of property subject to criminal usurpation are distinguished: physical, legal, and economic. This classification of the attributes of the property makes it possible to determine its legal understanding to create the conditions for compensation for material damage caused by a crime. The hypothesis that corporate reputation is an integral element of a concept such as «moral damage caused by a crime» has been demonstrated. This makes it possible to express the idea of the need to unify the understanding of the essence of moral damage and the possibility of including in its content the damage to the business reputation, as well as a unified approach to the procedure for its compensation in case of a criminal offense. It is concluded that the damage to the business reputation and the moral damage are the same in their essence and content, therefore, when compensating for the damage

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caused to the business reputation, the rules on compensation for moral damage apply.

Keywords: property damage; victim of moral damage; damage to business reputation; civil plaintiff; intagible material values.

Valores materiales e intangibles sujetos a indemnización a una víctima de un delito en los procesos penales de la Federación de Rusia y la República Socialista de Vietnam

Resumen

Mediante el método analítico, el artículo analiza cuestiones relacionadas con la indemnización por daños a la propiedad, el daño moral y el daño a la reputación empresarial causados por un acto delictivo. Para comprender la esencia del daño patrimonial, se distinguen los siguientes signos de propiedad objeto de usurpación delictiva: físicos, jurídicos y económicos. Esta clasificación de los atributos de la propiedad permite determinar su entendimiento jurídico a fin de crear las condiciones para la indemnización de los daños materiales causados por un delito. Se ha demostrado la hipotesis de que la reputación empresarial es un elemento integral de un concepto como «daño moral causado por un delito». Lo anterior permite expresar la idea de la necesidad de unificar el entendimiento de la esencia del daño moral y la posibilidad de incluir en su contenido el daño a la reputación empresarial, así como un enfoque unificado del procedimiento para su indemnización en caso de un delito penal. Se concluye que el daño a la reputación empresarial y el daño moral son los mismos en su esencia y contenido, por lo tanto, al compensar el daño causado a la reputación empresarial, se aplican las reglas sobre compensación por daño moral.

Palabras clave: daño patrimonial; víctima de daño moral; daño a la reputación empresarial; demandante civil; valores materiales intagibles.

Introduction

Currently, Art. 35 of the Constitution of the Russian Federation states that the right to private property is protected by law, and everyone has the right to own property, own, use and dispose of it both individually and jointly with other persons.

One of the grounds for recognizing a person as a victim in accordance with the text of the norms of Part 1 of Art. 42 of the Code of Criminal Procedure of the Russian Federation is the fact of causing property damage by a criminal offense.

1. Materials and methods

As the main method in the process of writing this scientific article, the authors used the general scientific systemic method of cognition, which made it possible to comprehensively consider the material and intangible benefits that are subject to compensation to a victim of a crime in the criminal proceedings of the Russian Federation.

The systematic approach method allowed us to consider topical issues related to ensuring compensation for property, moral damage and damage to business reputation caused by a criminal offense at the stages of initiating a criminal and preliminary investigation, as well as to study the interaction of the investigator with the inquiry authorities at these stages of pre-trial criminal proceedings.

The use of methods of analysis and synthesis made it possible to identify existing problems in the law enforcement practice of ensuring compensation for property damage, moral damage and damage to business reputation in the course of pre-trial proceedings in criminal cases.

The historical and legal method made it possible to study the genesis and legal nature of material and intangible benefits subject to compensation to a victim of a crime in the criminal proceedings of the Russian Federation.

The formal-logical method made it possible to analyze the activities of the investigator and the interrogator to ensure compensation for property, moral damage and damage to business reputation caused by crimes in the course of pre-trial criminal proceedings and put forward proposals for improving legislation in this area.

As a result of the application of this methodology, new knowledge was obtained of material and intangible benefits subject to compensation to a victim of a crime in the criminal proceedings of the Russian Federation, as well as on trends in the improvement of legislation in order to optimize the work of an investigator, an inquiry officer to ensure compensation for harm, to persons who are victims of crimes.

2. Results analysis

Paragraph 13[1] of Art. 5 of the Code of Criminal Procedure of the Russian Federation contains a very significant list of material objects included in the category of property. In particular, this rule states that property is any thing, including cash and documentary securities; non-cash funds in accounts and deposits with banks and other credit institutions; uncertificated securities, the rights to which are recorded in the register of owners of uncertified securities or a depository; property rights, including rights of claim and exclusive rights.

To understand the essence of the phenomenon under consideration, it seems logical to single out the following attributes of property.

The *physical attribute* means that property is always material in its essence, that is, it has a feature of a thing or is intangible, but at the same time it can be materialized in certain cases (for example, cashing out funds in accounts and deposits in banks). At the same time, ideas, views, manifestations of the human mind, information (intellectual property) cannot be considered property. We can speak of property as intellectual property only in a figurative sense, meaning, for example, violation of copyright and related rights, which are now often identified with the term "plagiarism".

The *economic attribute* means that a property always has a certain economic value. The usual expression of the value of a property is its value, i.e. a certain value in monetary terms. Therefore, money, currency values and other securities (stocks, bonds, etc.), which are equivalent to value, are also considered property that can be infringed upon.

The *legal attribute* assumes that the property always belongs to certain entities (the owner or other legal owner). The fact that property belongs to a certain entity must be documented (ownership, general power of attorney, donation agreement, inheritance, etc.).

Not only specially protected property should be considered in the possession of the owner, but also property to which there is free access – on the territory of the enterprise, in the premises of the institution, on the construction site or in another place of economic activity, on a vehicle, as well as anywhere, where it is temporarily unattended, if this property has not been lost by the owner.

At the same time, the above about the essence and meaning of the concept of "property" in this article is used in relation to the infliction of property damage by a crime and the issues of ensuring its compensation in pre-trial proceedings.

Within the framework of the issue under study, taking into account the current criminal procedural legislation, Y.N. Zvereva argues that loss of profit should also be included in property damage (Zvereva, 2015). J.V. Samoilova adds that in order to include lost profit in the amount of property damage, it is required that it be proven (Samoilova, 2011).

However, the authors cannot agree with these statements, since the lost profit as an element of damage caused to property can be such within the framework of other legal relations: civil, labor, etc. It seems illogical to say that a crime can cause property damage in the form of a certain amount of lost profit, due to the absence of a direct causal link between the criminal act and the possible benefit that the owner would acquire under a different set of circumstances, which can be confirmed by the following points.

First of all, the civil claim filed by the victim presupposes the indication of a specific amount of money in which the property damage caused is expressed. Moreover, this amount must be documented: sales receipts, receipts, consignment notes, the conclusion of a commodity examination or a protocol of interrogation of the victim, where he indicates the amount of property damage caused to him, if there are no documents for the property.

Second of all, as indicated in Part 1 of Art. 44 of the Code of Criminal Procedure of the Russian Federation, one or another harm to a person must be caused directly by a crime (as well as a socially dangerous act committed by a person in a state of insanity). In our understanding, this is precisely a certain amount of property damage, which the person claims after the fact of the crime has been realized by him and the specific amount of damage caused is indicated in the materials submitted to the investigator, the interrogating officer. It is difficult to imagine that in such documents the calculation of the amounts of lost profits can be made due to the lack of prerequisites for this in the current criminal procedure law.

Even earlier (in 1964) P.P. Gureev reasonably believed that property damage should be understood as a decrease or complete elimination of property benefits, as well as other violations of a person's rights as a result of a crime committed against him (Gureev, 1964). Note that both in that time period and today it is hardly possible to talk about lost profits, allegedly not received as a result of a committed criminal offense.

It should also be clarified that in the course of studying the materials of the criminal cases, the authors did not find examples confirming the claim for compensation along with the real property damage and lost profits.

But even being a supporter of compensation for lost profits in the framework of criminal proceedings, M.Kh. Abdrakhmanov expresses absolutely opposite arguments in support of his position, pointing out that the lost profit can be proved only with a certain degree of probability (Abdrakhmanov, 2008). Rights in this context E.S. Nikulin, who pointed

to the existence of many problems, in connection with which the lost profit can hardly be correctly calculated and fairly recovered, at least in the framework of criminal proceedings (Nikulin, 1983, p. 94).

In the materials of the studied criminal cases, there were cases when the victims filed claims for compensation for lost profits, as an element of property damage caused by the crime. At the same time, the court (judge), when considering a criminal case, dismissed the claim in this part in 32.9% of cases, or the victims did not file such claims at all – 54.6%. Only in 4.5% of cases the victims put forward such claims, and the court, when considering a criminal case, satisfied the claim in terms of compensation for lost profits as a component of property damage.

Speaking about the concept of property damage caused by a crime, it is advisable to draw attention to the decision of the People's Supreme Court of the Socialist Republic of Vietnam dated July 08, 2006 No. 03/2006/NQ-TATC. Clause 3 of this resolution defines that property damage should be understood as harm that can be expressed in monetary form, in property law, in damage directly caused by the crime and (or) destruction of the victim's property. Thus, we can say that in its position, the Supreme People's Court of the Socialist Republic of Vietnam does not maintain the relationship between property damage and loss of profits.

Speaking about one of the problems of the priority of compensation for harm to those or other persons who have suffered from a crime, L.N. Maslennikova as a whole reasonably believes that in the presence of both the owner and the title owner of the property, the owner first of all has the right to compensation, since the civil action primarily protects the right of property (Maslennikova, 2004).

But this position still needs significant clarification. In particular, it is necessary to take into account the fact that the right to compensation for damage caused to property is equally vested in all persons to whom it legally belonged. With regard to the field of civil law relations, if we are talking about a tort that violates property rights, then the interpretation proposed by L.N. Maslennikova, is quite acceptable. However, in cases where the sphere of legal relations falling under the regulation of criminal procedural legislation is meant, all subjects who owned or otherwise legally owned the property that became the subject of a criminal encroachment have equal rights to file a civil claim, in connection with which they have suffered certain harm.

In connection with the afore mentioned information, it is necessary to clarify the forms of compensation for property damage caused by a crime. In particular, I.S. Barinov and E.Y. Antonova offer the following options for such activities: return to the victim of property that has become the subject of a crime (since it acts as material evidence, this is possible only indirectly);

monetary compensation for harm to suspects, accused; restoration of damaged property of the victim (Barinova, Antonova, 2015).

The authors also clarify that compensation may also take place by transferring other equivalent property to the victim, as well as by providing other services that have a certain value expression for the person who has been harmed.

It should be added that these forms are very effective if the suspect or the accused wants to voluntarily compensate for the harm caused to them. However, speaking about the legal institution of compensation for harm caused by a crime, it should be noted such procedural methods as the seizure of property, a civil claim, and criminal procedural restitution.

Summing up the essence of property damage caused by a crime, it should be said that the legislator took a well-founded position, having formulated the concept of property in Paragraph 131 of Art. 5 of the Criminal Procedure Code of the Russian Federation. However, we believe it necessary to supplement the content of this article of the Criminal Procedure Code of the Russian Federation with the concept of "property damage", in connection with which it is advisable to supplement article 5 with Paragraph 132 of the following content: "Property damage is harm caused directly to the property of a person in the form of its loss, damage or destruction, as well as property rights, including the right to claim, subject to compensation to the person who made a claim in accordance with the procedure established by this Code".

Further, it seems expedient to dwell on such concepts as *moral harm* and *harm to business reputation*.

Speaking about compensation for moral harm, protection and restoration of the rights of persons who have become victims of criminal acts, M.A. Kravtsova believes that these categories have not only legal, but also moral components (Kravtsova, 2015).

Arguing about moral harm as a negative consequence of criminally punishable acts, the rights of E.N. Kleshchina, indicating that moral harm is present in almost every case of a crime, but in different situations it manifests itself in different ways (Kleshchina, 2010). Moreover, the specificity of moral suffering lies in the fact that after the commission of a crime, they do not pass, but continue for a rather long time. According to E.L. Sidorenko, this situation takes place in the overwhelming majority of criminal cases (Sidorenko, 2011). Pointing to the consequences of the crime, K.B. Kalinovsky supports the point of view of the above authors (Kalinovsky, 2016).

The opposite position is taken by N.V. Krivoshchekov, who asserts that moral harm arises from damage to property, and therefore does not acquire an independent significance (Krivoshchekov, 2004).

In the presented polar opinions, we tend to the position of E.N. Kleshchina, E.L. Sidorenko and K.B. Kalinovsky, since, based on the design of Part 1 of Art. 42 of the Code of Criminal Procedure of the Russian Federation, absolutely any crime inflicts one or another type of harm, and a person suffering negative consequences has the right to count on its full and real compensation (compensation), regardless of its nature.

At the same time, there is also an "external logical framework" for such moral harm, which cannot be compensated for in cases where a person was an eyewitness to the committed act, even if the person received serious psychological trauma. In addition, there are crimes when no moral harm is inflicted at all (as well as other types of harm). An example of such an act is illegal crossing of the State border of the Russian Federation (Art. 322 of the Criminal Code of the Russian Federation).

The study of international experience in understanding moral harm allows us to conclude that in most countries, this harm is considered as a separate type of harm, which often expresses in the form of emotional and moral feelings and suffering of a person. As an example, we can cite the provision of the resolution of the Presidium of the Supreme People's Court of the Socialist Republic of Vietnam dated April 28, 2004 No. 01/2004/ NQ-HĐTP "On instructions for the application of certain provisions of the Civil Code of the Socialist Republic of Vietnam on non-contractual compensation for harm", according to which moral harm is defined as suffering experienced a person (or his close persons) in violation of his right to life, health, honor, dignity, and reputation.

Arguing about the positions of the Russian scientific community in terms of the relevance of issues of domestic law enforcement experience of compensation for moral damage caused by a criminal act, one cannot fail to note the fact that these issues are often the subject of consideration in the European Court of Human Rights (hereinafter the ECHR) (Grinenko, 2008).

In particular, in its judgment in the Kanayev case against the Russian Federation, the ECHR draws the attention of the law enforcement officer to such an important aspect, which is the need to take into account Rule 60 of the Rules of Court, which prescribes that "any claim for just satisfaction must be examined point by point and presented in written form together with the relevant supporting documents or written evidence, failure to provide which may be the reason for the rejection by the European Court of all or part of the claim".

Further, examining the essence and content of such very close concepts as moral harm and harm to business reputation, it can be stated that they are divided by the legislator into different legal categories.

First, we should define the concept of "business reputation", focusing on the term "reputation". In a purely legal sense, "reputation" (from the Latin "ponder, reflect") is the created public opinion about the merits and demerits of someone.

At the same time, with a business reputation, many scientists personify a certain set of qualities and assessments (Mikhno, 1998, p. 122-123; Kopik, 2014, p. 105-106). It can be argued that it is a personal moral right. At the same time, business reputation is characterized by social relations in which there is no property component.

Regarding the business reputation inherent in a legal entity, it should be said that it has a material component and can be determined in a specific monetary equivalent, and must also be reflected in financial documents.

L.I. Yarovikova, who claims that the business reputation of enterprises and institutions ensures the successful economic activity of the respective legal entity (Yarovikova, 2001, p. 64). At the same time, it should be added that the category "business reputation" can also be applied to legal entities that do not set themselves the goal of making a profit (for example, various public associations).

Arguing about such a category of victims of crimes as legal entities, it should be said that the negative consequences of a criminal act for this category of victims can be expressed as undermining confidence in their authority, for example, in the credit and banking sector, potentially causing harm to the entire basic element of the financial system states (Pushkarev *et al.,* 2020; Pushkarev *et al.*, 2021), and in the negative dissonance caused by the loss of leading positions in a certain field of activity, in causing property damage, the emergence of unfair competition, as well as in other negative post-criminal consequences.

The procedure for compensation for damage to the business reputation of a legal entity caused as a result of a criminal act is similar to the rules for compensation for moral damage caused to individuals. It is reasonable to point out that even in the era of the RSFSR Code of Criminal Procedure, many procedural scientists promoted the idea of compensation for moral damage to legal entities if it was caused as a result of the dissemination of information discrediting its business reputation (Brusnitsyn, 1995; Khatuaeva, 2000).

In cases of causing moral harm to an individual, he has the right to declare a claim for his property compensation. Similarly, a legal entity that has suffered from a crime has the right to claim a property equivalent in compensation for damage caused to its business reputation. At the same time, scientific polemics continued for a long time regarding the possibility of causing moral harm to a legal entity. A number of scientists, and in different branches of legal sciences, substantiate the position that legal

entities can also be inflicted moral harm (Afanasyeva and Belova, 2002). Opponents of this tendency substantiate their position with the arguments that moral harm can be expressed exclusively in physical and mental suffering, which can only be experienced by a person (physical person) (Bezlepkin, 1998; Zavidov and Kurina, 2002; Ivanov *et al.,* 2021).

A historical excursion defines the emergence of the concept of "moral harm" in the Russian legal doctrine by the moment of approval in the Code of Laws of the Russian Empire in 1835 provisions concerning compensation for harm caused to personal health. But for the first time, the legislator provided for the possibility of resolving issues of compensation for moral harm in criminal proceedings only in Art. 53 of the Code of Criminal Procedure of the RSFSR 1960, which, together with the facts of causing physical and property damage, indicates the possibility of recognizing a person as a victim in cases of causing him moral harm.

The modern interpretation of the term "moral harm", based on the provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated December 20, 1994 No. 10, allows us to say that it "may consist in moral experiences in connection with the loss of relatives, the inability to continue an active social life, loss of work, disclosure family, medical secrets, dissemination of untrue information discrediting the honor, dignity or business reputation of a citizen, temporary restriction or deprivation of any rights, physical pain associated with injury, other damage to health or in connection with an illness suffered as a result of moral suffering, etc.". Let us add that moral harm also takes place in cases where there was an attempt to commit a crime.

Let us note the opinion of V.I. Shvetsov, who very succinctly expressed the possibility of causing moral harm to a legal entity, pointing out that such harm can lead to discrediting, undermining the authority of a particular legal entity (Shvetsov, 1999). Having a similar position, Ch.H. Chang in his work substantiated the conclusion that moral harm to a legal entity manifests itself in the form of infringement on the reputation, reduction or loss of trust of society, clients and other persons to this legal entity (Chang, 2000). At the same time, it should be clarified that moral harm is expressed not only in the consequences, but also in feelings about the possibility of their occurrence.

Let us also cite the position of V.V. Khatuayeva, who proposes to use the institution of compensation for moral harm as a criminal procedural remedy (Khatuaeva, 2000). Justifying the consistency and viability of this proposal, we note that the draft Code of Criminal Procedure of the Russian Federation contained a provision that was literally stated in the following edition: "A victim may be a legal entity that has suffered moral or material harm by a crime" (Clause 11, Art. 49 of the Draft Code of Criminal Procedure of the Russian Federation).

In this case, it was assumed that the rights and obligations of the victim were exercised by a representative of the legal entity. However, when accepting the final version of the criminal procedure law, the legislator preferred another, known to us, formulation – harm to the business reputation of a legal entity.

In the course of preparing this study, a sociological survey was conducted in order to obtain data on the issue of differences in the understanding of such terms as "moral harm" and "harm to business reputation". In particular, 76.8% of the respondents answered positively to the question that these terms should be considered as equivalent concepts.

It is logical to substantiate these results with arguments, the essence of which boils down to the fact that an official in whose proceedings a criminal case on the fact of inflicting "moral harm" and "harm to business reputation", sees as his goal to ensure real compensation, while understanding the legal nature of these terms.

Speaking about a unified approach to the meaning of the terms under consideration, the provisions of the Code of Criminal Procedure of the Republic of Uzbekistan can be cited as a positive example, in Art. 54 of which it is indicated that moral, physical or property harm can be caused to both an individual and a legal entity.

In this regard, it should be noted and the Criminal Procedure Code of the Republic of Belarus, where the legal definition of moral harm is set out in Paragraph 5 of Art. 460, wherein moral harm means causing not only moral or physical suffering to individuals, but also damage to business reputation (we assume both a legal entity and an individual).

Thus, the above circumstances and their justification allow us to formulate the author's vision and proof of the conclusion about business reputation as an integral element of moral harm. At the same time, these arguments allow us to express the idea of the need to unify the understanding of the essence of moral harm, the possibility of including harm to business reputation in its content, as well as a unified approach to the procedure for its compensation in the event of a criminal offense.

Speaking about the modern judicial practice of compensation for moral harm, you can refer to the resolution of the Plenum of the Supreme Court of the Russian Federation dated February 24, 2005 No. 3 "On judicial practice in cases of protecting the honor and dignity of citizens, as well as the business reputation of citizens and legal entities", which says that the dissemination of information discrediting the honor and dignity of citizens or the business reputation of citizens and legal entities should be understood as the publication of such information in the press, broadcast on radio and television, demonstration in newsreel programs and other media, distribution on the Internet.

The above described legislative constructs and theoretical views allow us to summarize that business reputation and moral harm are the same in their essence and content, and when compensating for harm caused to business reputation, the rules on compensation for moral harm are applied.

Conclusions

In conclusion, we believe it expedient to formulate the following conclusions regarding the issues of compensation (compensation) of material and intangible benefits that have been negatively affected because of a committed criminal act and are subject to compensation in the framework of criminal proceedings.

It is proposed to supplement Art. 5 of the Code of Criminal Procedure of the Russian Federation with clause 13^2 of the following content: "13^2) property damage - damage caused directly to the property of a person in the form of its loss, damage or destruction, as well as property rights, including the right to claim, subject to compensation to the person who made a claim about it in the procedure established by this Code".

Through the analysis of legislative structures and the study of theoretical views the authors have summarized the conclusion that harm to business reputation and moral harm are the same in their essence and content, and when compensating for harm caused to business reputation, the rules on compensation for moral harm are applied.

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Venezuela en Oclocracia ¿Un problema más cultural y educacional que económico o ideológico?

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Resumen

Polibio sostuvo en su momento que la oclocracia se presenta como el peor de todos los males de los sistemas político democrático, el final del estado y la degeneración del poder. La oclocracia tiene la apariencia de una democracia, pero no lo es, ya que esta mutila el poder del pueblo y no es más que una democracia degenerada, ya que en su decurso pervierte sus instituciones para halagar el deseo de las masas (poder de la muchedumbre). Bajo esta perspectiva, este trabajo tuvo por objetivo describir como una parte de la sociedad venezolana, a lo largo de estas dos últimas décadas de vida republicana, se ha convertido en una sociedad oclocrática, es decir, el gobierno de la plebe, la chusma, grosera, ignorante y cargada de vulgaridad, esto se debe a su baja formación cultural, moral y educacional. La naturaleza del ensayo es de carácter descriptivo. Se concluye que el conflicto político y social venezolano que degeneró en oclocracia está más determinado por factores culturales y educacionales que económicos o ideológicos.

Palabras clave: oclocracia; democracia; degeneración del poder; cultura; educación.

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Venezuela in Oclocracy: A problem more cultural and educational than economic or ideological?

Abstract

Polybius argued at the time that ochlocracy is presented as the worst of all the evils of democratic political systems, the end of the state and the degeneration of power. The ochlocracy has the appearance of a democracy, but it is not, since it mutilates the power of the people and is nothing more than a degenerate democracy, since in its course it perverts its institutions to flatter the desire of the masses (power of the crowd). Under this perspective, this work aimed to describe how a part of Venezuelan society, throughout these last two decades of republican life, has become an oclocrocratic society, that is, the government of the plebs, the rabble, rude, ignorant and loaded with vulgarity, this is due to its low cultural formation, moral and educational. The nature of the essay is descriptive. It is concluded that the Venezuelan political and social conflict that degenerated into ochlocracy is more determined by cultural and educational factors than economic or ideological ones.

Keyword: ochlocracy; democracy; degeneration of power; culture; education.

Introducción

Con el pasar de los tiempos y en la historia de la humanidad la política en las sociedades mundiales ha ocupado grandes espacios y un profundo protagonismo en el quehacer de las personas. Desde la perspectiva etimológica, la democracia es el gobierno del pueblo que con la voluntad general legitima al poder estatal. Fueron los griegos, quienes acuñaron el término democracia o *demokratia*, que proviene de las palabras griegas demos, pueblo y kratos gobierno o poder (Knoll, 2017).

La democracia en su acepción estricta es una forma de gobierno, de organización del Estado, en la cual las determinaciones o decisiones colectivas son adoptadas por los ciudadanos mediante mecanismos de participación directa o indirecta que les confieren un manto de legitimidad a los representantes. En su acepción más amplia, se trata de una forma de convivencia social en la que los miembros de la sociedad civil son libres e iguales y las relaciones sociopolíticas se han constituido en convenios y/o pactos como una forma de dispositivos contractuales.

La democracia constituye un ideal que procura la libertad y la igualdad de los individuos de una sociedad. Pero esa percepción conceptual busca hacerse verdadera, en la práctica, a través de un cúmulo de normativas

y organizaciones determinadas, facilitando el inicio así a la organización política democrática. Pero los sistemas democráticos no son muy frágiles y, por ello, su existencia se halla sometida a riesgos constantes que emanan tanto del seno de los propios sistemas como de sus enemigos externos (Gombert, 2010).

Por esto, los sistemas democráticos pueden derivar una serie de problemas, de aspectos muy relevantes en el campo de la política y el mundo social, entre estos problemas que puede abordar la democracia son aquellos que se relacionan con la democracia representativa versus la democracia participativa, a predominio de los ejecutantes sociales sobre los ejecutantes políticos, así como los problemas que se suscitan de la legitimidad democrática, la politización de la identidad educacional y cultural, el fin del comunismo o socialismo, la democracia versus la Pobrezas y el subdesarrollo, entre otros (Arenas, 2006).

Cuando un sistema democrático en cualquier sociedad se coloca su "mejor traje" de ilegalidad y de violencia; cuando la corrupción es prácticamente una forma de vida y no un tipo de delito socialmente repudiado; cuando la separación de poderes se vuelve difusa o inexistente; cuando los intereses de la minoría prevalecen sobre el bien común de todos los ciudadanos, con el pasar del tiempo, la democracia se constituye en oclocracia. Es decir, esto se manifiesta, cuando a pesar de los considerables contratiempos socioeconómicos se hacen intolerables y las instituciones se enfilan en protección particular de un grupo de la sociedad, la democracia se degenera y se transforma en una oclocracia (Matheus, 2012).

En la concepción de la definición de Oclocracia, es evidente que fue el historiador griego Polibio quien gesto este concepto, ya exhibido particularmente por Platón en su obra *La República*, seguidamente Aristóteles con su ordenamiento de la estructuración de los sistemas políticos en "puros y corruptos". Pero fue el mismo Polibio quien concibió las teoría de los sistemas políticos que el denomino: Anaciclosis (ciclos degenerativos de formas de gobiernos en seis fases), ésta hipótesis especifica un ciclo vicioso-virtuoso, donde los Estados van cambiando para luego sufrir una regresión en cada uno de los sistemas políticos ya instaurados (Monarquía-Tiranía-Aristocracia-Oligarquía-Democracia-Oclocracia), en otras palabra (Gobierno del Rey-Gobierno del tirano abusador y violento-Gobierno de los mejores-Gobierno de unos pocos-Gobierno de todos-Gobierno demagogo) (Bueno, 2018; Knoll, 2017).

Hoy en día por ser los sistemas democráticos frágiles su existencia se halla sometida a riesgos constantes, es por ello que las democracias están viviendo momentos de crisis, de cambios muy profundos y como sabemos toda crisis implica un proceso de destrucción y construcción el cual nunca es coexistente, un proceso en el que, al diagnóstico conocido de los vicios presentes, a la certeza de las estructuras e instituciones viejas, se opone

la incertidumbre de lo desconocido y de las alternativas futuras (Osorio y Phélan, 2019).

Bajo esta circunstancia, los sistemas políticos democráticos están en desventajas y se ven forzados, a sostener una intrincada armonía derivada de las desviadas presiones generadas entre una configuración social y tecno-económica, burocrática y jerárquica, y un orden político formalmente asentado en la igualdad y la participación. Como consecuencia de ello, los sistemas políticos democráticos actuales cada vez se hallan menos competentes o preparados o aptos para atender de forma verdadera y efectiva a dos de sus aspectos básicos como son, por una parte, el dominio de los gobernados sobre los gobernantes y, de la otra, el dominio recíproco entre los gobernantes (Gurutz-Jáuregui, 1994).

En estos tiempos actuales la democracia como sistema político de gobierno se encuentra subyugada a un doble desafío; uno de esos desafíos viene implícito, en que esta tiene que renovarse, reformarse y ahondar en el contenido de sus fines, ajustándolos a los valores sociales, éticos, culturales y educacionales vigentes.

El sistema político venezolano después de una guerra civil convertida en gesta libertadora pasó el resto del siglo XIX siendo testigo de la guerra entre caudillos, luego llegaría el siglo XX con la unión como nación forzada por la mano del dictador Juan Vicente Gómez, para luego iniciarse un largo período que desencadenó un proyecto nacional cuya base fundamental fue la Democracia representativa (Bolívar, 2013).

Desde 1958 a 1998, Venezuela fue gobernada bajo un sistema que era un híbrido entre partidocracia y oclocracia, esto por el inmenso poder de los partidos y la gran inconsciencia de la gente. Con este tipo de sistema político se alternaron en el poder los partidos políticos Acción Democrática y el Comité de Organización Política Electoral Independiente COPEI.

Estos partidos se ponían de acuerdo para nombrar los jueces de la extinta Corte Suprema de Justicia, al fiscal general, al contralor, para ascender militares, otorgar contratos o promulgar leyes que los siguiera manteniendo en el poder, al final todo esto degeneró en descontento generalizado, en una inmensa burocracia y una negligencia sin precedentes. Lo que generaría a su vez luego la gran decepción de las masas con quienes lideraron el proyecto democrático para terminar regresando a la visión caudillista del país. La última etapa de esta corta vida republicana ha sido la fractura social y política (Puente, 2016).

La falta de cohesión social sobre la base de lo cultural y lo educacional, son quizá uno de los elementos más latentes desde el inicio de la vida republicana democrática hasta hoy en la sociedad venezolana, la imposibilidad de la sociedad de articularse en torno a objetivos comunes y actuar en consecuencia es evidente, salvo algunos momentos muy específicos en el país reina el canibalismo social o “sálvese quien pueda”.

Los niveles de escepticismo en las instituciones u organizaciones políticas venezolanas, es decir, los partidos políticos e incluyendo a las demás personas de la sociedad, se han elevado exponencialmente, dicha situación o factores perjudican de forma considerable la posibilidad de asistencia y cooperación, de hecho, fomentan e impulsan todo lo opuesto. En esta realidad, la precariedad económica, junto al aspecto cultural y educacional actúa como combustible acelerante, sirviendo incluso como argumento para justificar cualquier pérdida de civilidad, es decir, el triunfo de la barbarie (Martinell, 2010).

Ese fue el combustible para que apareciera después de sus dos intentonas de golpe de estado (en uno directamente y en otro indirectamente) en 1992, Hugo Chávez llega al poder, un hombre anti-sistema, y que profesaba su odio contra los adecos y copeyanos. Chávez convocó a una Asamblea Constituyente, esta Asamblea le otorgó poderes más allá de su competencia, redujo el congreso a tres comisiones, empezó a despedir y nombrar jueces, comenzó a legislar y establecer cuando se realizarían elecciones.

Chávez a través de dicha Asamblea logró ampliar su periodo a seis años y además estableció la reelección inmediata, se otorgó la prerrogativa de los ascensos militares y estableció nuevos mecanismos de participación como los referéndums (García, 2003).

Se instalo un sistema de gobierno en Venezuela que parece democracia, pero no lo es, parece dictadura, pero no es, parece socialismo, pero tampoco es, parece comunismo y tampoco es, parece muchas cosas y no lo son. Definitivamente se llama Oclocracia.

El termino Oclocracia proviene del vocablo griego *ochlokratía*, de *ochlos* que significa "turba" o "multitud" y de *kratos* que significa poder, gobierno o la dominación viciada por la tiranía de la muchedumbre. Es decir, la clase social más marginada y empobrecida. Pero por sí sola esta palabra tiene connotaciones de desorden, tumulto, irracionalidad, incompetencia, insipiencia, irresponsabilidad y degradación del ejercicio del mando político (Bueno, 2018).

Es así como desde 1999 hasta la actualidad en Venezuela poco ha importado quien ejerce el Gobierno, por lo que actualmente estamos dirigidos por la peor de las Oclocracias que hemos padecido, dicho término acuñado por Polibio (siglo II AC) como el gobierno de los peores. Termino que además no ha trascendido en el tiempo sino en pocos círculos académicos, y proviene de la palabra *okhlos*, y se refiere a la forma degenerativa de la Democracia, en donde los gobernantes son envueltos por la soberbia y el más vil desprecio por las leyes ejerciendo el poder de forma totalitaria, estos se posicionan en altas filas de la política, muchos personeros que ni en el fondo ni en la forma se muestran entrenados y capaces de ejercer ese difícil oficio que es gobernar (Gamus, 2003).

En este orden de ideas, El presente artículo tiene como objetivo analizar la oclocracia como una forma de degeneración de la democracia venezolana. Entonces la pregunta de investigación a responder al final de esta es: ¿Es la oclocracia en el sistema político venezolano un problema más educacional y cultural que económico o ideológico?

1. Metodología aplicada

La tradición hermenéutica de carácter político sociológico documental constituye esta investigación, que se aborda desde la visión cualitativa con la revisión bibliográfica. Con el interés en interpretar textos de tipos documentales escritos, para establecer su verdadero significado, esto significa, mostrar de manera clara y más allá de toda duda que pueda ser razonable basadas en el marco del sistema de representaciones epistemológicas, ideológicas y espacio-temporales, en el cual es creado por un autor o por autores, siempre condicionado por su carga histórica, su ámbito temático o problemático del que puede versar su obra, sino, además, de sus intereses personales, concepción del mundo así como de las características materiales y culturales del tiempo y espacio social en el que vive o vivió.

Entonces denominamos hermenéutica al conjunto de conocimiento y técnicas que permiten que los signos se expresen y los ayudes a descubrir sus sentidos e ideas.

Pero en este contexto no solo los textos escritos son susceptibles a los procesos interpretativos, de hecho, la misma realidad que le rodea puede ser considerada como un texto que puede ser leído y releído de manera infinita sin llegar a agotarse en su significación, para conocer a profundidad sus mensajes visibles u ocultos, es por esto por lo que en todo proceso de observación documental encaminado al diálogo simboliza por sí mismo un ejercicio hermenéutico.

En el caso específico de esta investigación que, como se ha reiterado, tiene por objetivo determinar y revelar algunas de las críticas efectuadas a la democracia bolivariana revolucionaria o socialista y su forma degeneración a una oclocracia, por lo que se procedió mediante la estructuración de un conjunto de elementos teórico a partir de una selección de la literatura filosófica, sociológica y politológica que dan cuenta, en distintas etapas, de actitudes o posiciones críticas sobre el régimen democrático en general.

Lo que se pretende es dar cuenta, en una línea histórica de tiempo evolutiva, que parte de la antigüedad hasta el presente, de particulares argumentos críticos que pronunciaron en su obra autores que, sin duda, forman parte importante del acervo epistémico de los saberes políticos, nada más.

El proceso indagativo se desarrolló en el segundo semestre del 2020 y comprendió desde el punto de vista de su operatividad de dos momentos: En un primer momento se llevó a cabo la constatación de fuentes documentales escritas, primarias y secundarias, de los artículos escritos que abordan el tema los cuales sirven para identificar y para elaborar la selección de la literatura y los autores analizar con respeto a la temática sobre la degeneración de la democracia venezolana a oclocracia.

En el segundo momento y último momento, se procedió a redactar el trabajo para su publicación, análisis y coherente discusión por los lectores.

2. La oclocracia como la forma de Gobierno viciada por la tiranía de la muchedumbre

En la evolución histórica de las formas de Gobierno, esta nos relata cómo las diferentes formas de gobierno siempre son cíclicas y que cada periodo, etapa o fase acaba cuando una de estas formas de gobernar se degenera en una versión de sí misma. Lo que hoy es Venezuela fue conquistada y subyugada por la monarquía española, luego fue gobernada por la aristocracia criolla que terminó en una oligarquía, que devasto a la democracia y que, al parecer, ahora surgió en una oclocracia para terminar en una kakistocracia o ineptocracia, es decir, el gobierno de los peores.

El filósofo griego Aristóteles, sopesaba que la oclocracia era el gobierno de los demagogos (Persona o dirigente político, que con su actuación y actitud trata de complacer a las personas para atraérsela y conseguir su apoyo, estos maniobran los sentimientos de los electores) que gobernaban en nombre de la muchedumbre y, por tanto, consideraba que era una forma de degradación del modelo democrático. Es por ello por lo que, al pasar de los siglos, la oclocracia como forma de gobierno se ha materializado en muchos sectores del mundo, particularmente en Occidente en especial en las sociedades latinoamericanas como lo es Venezuela.

No obstante, es por esto por lo que, desde la vieja ciudad de Atenas en la antigua Grecia hasta nuestros días, las diversas sociedades se han dado otras formas de gobierno como la aristocracia, la democracia, la monarquía, y la tiranía, entre otras. Es por ende que la oclocracia ha venido a ocupar, entre todas ellas, un papel influyente al constituir una forma degenerativa de la democracia, confirmando la anacyclose o teoría cíclica de la sucesión de los sistemas políticos, desarrollada por el griego Polibio (Knoll, 2017).

Como la oclocracia es una forma degenerativa de gobernar, ya que esta representa al gobierno de las muchedumbres, es decir, la plebe o las masas o el gentío o las personas mediocres, es un elemento tergiversado de la creación de la biopolítica y del ejercicio del mando político que al instante o

en la oportunidad de afrontar las diferentes cuestiones políticas se presenta con una voluntad tergiversada, viciada, evicciosa, confusa, injuiciosa o irracional, por lo que carece de capacidad de autogobierno y por ende no conserva los requisitos necesarios para ser considerado como pueblo.

Es muy importante no caer en la confusión cuando se hace mención del concepto de muchedumbre con la noción de multitud, es decir entre pueblo y muchedumbre (Knoll, 2017).

La diferencia básica radica en que el conjunto de ciudadanos puede ser simplificado en una unidad como cuerpo con voluntad única, ya sea como una simple muchedumbre que reúna los todos los requerimientos imprescindibles e indispensable para ser considerada como pueblo, la cual no se puede confundir con el concepto de multitud, ya que esta rehúsa esa unidad conservando su naturaleza múltiple.

Es un sistema político que emerge de la degeneración de la democracia caracterizado por la toma del poder de la muchedumbre, es decir, aquel sector de la sociedad sumido en la ignorancia, que se mueve por sentimientos elementales y emociones irracionales, en contraposición al pueblo, que, influenciada por la propaganda política, combinado al cansancio de las masas consientes y provocado por malos gobiernos, decide otorgarle al momento del sufragio su voto al enemigo de "la mafia del poder" (Gamus, 2003).

En la oclocracia, el oclócrata disfraza su voluntad como la voluntad de todos. Para gobernarlo el líder oclócrata utiliza al sector más ignorante de la población que ha sido manipulada por el discurso y la propaganda de unos pocos, desgraciadamente no bien intencionados. Esta población cree que está actuando de acuerdo con la democracia porque está ejerciendo su legítimo derecho de escoger a sus gobernantes.

La oclocracia ingobernabilidad como resultado de la aplicación de políticas demagógicas, es una forma de gobierno viciada por la tiranía de la muchedumbre, por el tumulto corrompido convertido por el poder en autocracia. La cual nace de una democracia incipiente que se puede convertir en la autocracia y desembocar en la dictadura como ya se tienen ejemplos en la historia de la humanidad, tal fue el caso de Alemania con el nazismo, en Italia con el fascismo, en Cuba con el comunismo, y Venezuela con el socialismo del siglo XXI, junto a la revolución bolivariana (Puentes, 2009).

La oclocracia era concebida por Polibio como la imposición de las mayorías incultas y el uso indebido que hacen del poder político-social, para de una forma obligar a los gobernantes a adoptar, decisiones o regulaciones políticamente desacertadas y/o desafortunadas; es una forma o manera de gobernar muy parecida o con mucha similitud a la forma demagógica. Es por esto por lo que la oclocracia, se caracteriza por tres fenómenos:

1. Un tipo específico de violencia denominado desde la Antigüedad "hybris" y caracterizado por una violencia específica.
2. La ilegitimidad o la ilegalidad o la paronimia que se asienta sobre la violación reiterada de los preceptos legales y su consecuente neutralización del sistema de justicia, y;
3. La tiranía de la mayoría, que pretende sustituir la democracia representativa mediante un sistema plebiscitario el cual es una forma especial de demagogia (Bueno, 2018).

Por estas razones, la oclocracia se convirtió en la degeneración natural de la democracia, incluso quizá nadie se acuerde de este concepto porque para muchos les incomoda ponerle nombre o, siquiera, considerar la inevitabilidad de la degradación de su sistema democrático, como es hoy en día el caso venezolano al cual haremos referencia.

Entonces ¿Por qué Venezuela es una oclocracia? Hoy tiene un gobierno aparentemente democrático con tendencia autoritarias y con destellos de demagogia, de hecho, no existe un solo caso histórico, donde un Estado organizado, complejo, como lo conocemos hoy día que, en occidente, se haya instaurado este sistema político degenerativo del modelo democrático, como lo es la oclocracia o gobierno demagogo, era inimaginable dicha práctica tergiversada de la democracia, a pesar de ser una forma degenerada o tergiversada de gobernar, sigue siendo para muchos políticos una forma muy útil como estrategia para la consecución del poder político-social e, incluso, también el poder económico.

Pero tenemos que definir que la demagogia es un vocablo que significa *Demos*= pueblo y *Ago*= dirigir, regir, manejar, conducir, guiar presidir, en otras palabras, entre la teoría y la práctica del uso en gobernabilidad de la demagogia hay una grieta primordialmente acrecentada que obstaculiza su impracticabilidad real. El demagogo hace uso de los sentimientos, anhelos, aspiraciones, expectativas de las grandes masas para mediante una serie de tácticas narrativas hacer promesas aceptables que le permiten a los candidatos postulantes alcanzar el voto de los electores a consta de los beneficios de estos.

En Venezuela esta degeneración natural de la democracia denominado oclocracia por los antiguos griegos tuvo su inició hace veinte años, cuando el exmilitar golpista Hugo Chávez Frías, abrió en 1999 su "Caja de Pandora" donde estaba encerrado el "Socialismo del Siglo XXI" y dejó salir todas las perversidades del populismo radical.

La denominada Revolución Bolivariana que comandó el ex-militar Hugo Chávez, no prometió un tipo de democracia liberal, sino más bien su intención era instalar una especie de sistema democrático mayoritario que diera paso a un modelo de democracia de corte

participativa. Se retomaba, aunque en clave popular y anti-elite, lo que denominaba en su libro el periodista y político venezolano, Vallenilla Lanz, el "Cesarismo democrático" (Puente, 2016).

Ante la creencia de la existencia de un pueblo incapacitado, para el político oclócrata o demagogo, este lo que concebía o lo reivindicaba como la figura del caudillo carismático y el gendarme que concentrase el poder y garantizase el orden político y socioeconómico para el país ideal que ellos añoraban. Debido a la gran brecha suscitada después del estallido social denominado por muchos el "Caracazo" de 1989, lo que generó una aguda inestabilidad socioeconómico y política y permitió que, apareciera el ex-militar golpista Hugo Rafael Chávez Frías, quien representaba para muchos el *salvador de la patria* y del sistema democrático venezolano decadente, surgía como una especie de expresión de un "cesarismo progresista". Sin embargo, para otros representaba una especie de caudillo mesiánico, populista y demagogo.

En Venezuela después del estallido social del "Caracazo", comenzó la democracia, a convertirse en una víctima de la ineptitud y cleptomanía de la clase política que gobernaba, de la crisis de las políticas que han dejado en la acequia a millones de venezolanos, de la insultante endogamia de los partidos, ha entrado en una fase de deslegitimación que ha degenerado en oclocracia.

Se puede observar hasta nuestros días como una parte de los ciudadanos cada vez mayor, ya no ven satisfechas sus necesidades básicas, que sus demandas y expectativas no son atendidas, que se sienten aislados, defraudados y esto ha generado que entremos en una fase de anomía, donde unos pocos, erigidos ya en líderes sociales y políticos, no dudan en lanzar a los "suyos" a defender cualquier causa que vaya contra el orden establecido, contra los principios aceptados hasta ahora como norma, contra la legalidad vigente (Matheus, 2012).

Exponía el filósofo chino Confucio que "**sin un buen ejemplo institucional no hay esperanza para el pueblo"**, en Venezuela hoy, las instituciones, comenzando por los partidos políticos, son cualquier cosa menos un buen ejemplo.

Es por eso por lo que es conviene recordar siempre que la historia es cíclica, para hacer ver que nunca hay nada nuevo bajo las nubes y el sol. Esto nos ayuda a explicar que la oclocracia, para que nadie lo olvide, tiene su origen en los totalitarismos y, por lo tanto, todos los oclócratas de cualquier época tienen algo en común: saben seducir a la gente vendiéndoles el relato legítimo de una vida digna, pero jamás revelaron sus verdaderos propósitos hasta llegar al poder, como lo hizo Hugo Chávez (Levy, 2018).

La sociedad venezolana castigada por una profunda crisis moral, educacional, cultural, económica y política es hoy en día víctima de un

ardid de corrupción, la sensación de desgobierno crece día a día., y lo que se está observando es, un desorden, un caos, un abandono, un desconcierto, un desarreglo, un desbarajuste, una desidia, un descuido, una desatención, una negligencia e incuria.

Se difunde entre la ciudadanía, la sensación de falta de autoridad. ¿Por qué? La grave crisis social, económica y política por la que atravesaba el país fue tergiversado, desfigurando y demoliendo no solo la imagen del sistema político venezolano como lo era la democracia representativa, sino también a los partidos políticos, así como la imagen y la legitimidad de las clases dirigentes en general, a quienes la sociedad los percibió como los grandes cómplices de una gran impostura, lo que condujo a la sociedad venezolana y, al país en general, a un descomunal desastre, que se hubiese podido evitar si no fuera por la codicia o avaricia de unos y la incompetencia y la ineptitud de otros (Bonal, 2006).

El complejo sistema político generado en estos últimos veinte años de revolución bolivariana y de socialismo del siglo XXI, han ocasionado crecientes y razonadas dudas sobre la capacidad real del gobierno del oclócrata Nicolas Maduro, al tiempo que ha relegado la legitimidad democrática a un segundo plano, configurando un sistema de poder en el que la legitimidad que emana de los ciudadanos tiene un papel secundario y accesorio (Puentes, 2009).

El resultado es la sensación de que el gobierno ejerce poco su mando, y que, por lo tanto, Nicolas Maduro como gobernante carece de autoridad. No resulta convincente en sus palabras, ni fiable en sus acciones.

Esta combinación de la falta de autoridad y la confusión de su responsabilidad, han dado como resultado la sensación de que Venezuela se encuentra en un desgobierno, el cual siempre representa un factor de desasosiego, intranquilidad, inquietud, incomodidad, malestar, disgusto social, porque no hay nada más inquietante que el caos. Y mientras la sociedad venezolana continúe en esta senda en medio de este caos, la democracia funcional, no pasará de ser una oclocracia cleptocrática (Romero y Benayas, 2018).

A partir del desgobierno de Nicolás Maduro, la incierta aspiración a una democracia participativa mayoritaria encabezada por un "buen César" al mejor estilo del imperio romano, se transformó en un "cesarismo regresivo" y en una oclocracia liderada por un "mal César" (Levy, 2018).

Según Polibio, la oclocracia desvirtuaba la democracia con su recurso a la demagogia y la ilegalidad. En una interpretación moderna de la oclocracia, esta antes que fortalecer a un pueblo organizado y el poder popular, se instrumentaliza a las masas por diferentes medios y se afirma una estrecha base de apoyo para lograr la supervivencia de un grupo en la cúspide del gobierno.

Es allí donde se produce el retroceso de los componentes básicos de toda democracia; como la protección de los derechos humanos, se degradan y surgen dispositivos autoritarios. En Venezuela esto se da en medio de una monumental crisis cultural y educacional más que económica e ideológica, que arrasa con todos aquellos avances y aportes de los anteriores gobiernos democráticos, conocidos como los gobiernos de la cuarta república, que beneficiaron a los sectores populares, lo que género y agudizo la confrontación social entre las clases sociales (García, 2003).

Como ya se ha determinado por lo antes expuesto, la oclocracia es, simplemente, aquel sistema caracterizado por el gobierno de la muchedumbre, es decir, aquel sector de la sociedad marginal sumido en una gran ignorancia, que se mueve por sentimientos elementales y emociones irracionales, en contraposición a la multitud, aquel cuerpo social que está integrado por los ciudadanos conscientes de su situación y de sus necesidades, con una voluntad formada y preparada para la toma de decisiones y ejercer así su poder de legitimación de forma plena.

Esta aproximación de la definición de oclocracia coloca de realce su característica fundamental, es decir, el gobierno de la muchedumbre, contrapuesto al pueblo, al *demos* griego. No obstante, debido a que la muchedumbre, como grupo social investido con el telar de la ignorancia y el resentimiento social, da pie a que el dirigente oclócrata aprovecha para figurar como el prototipo del personaje justiciero que gira todo sus empeños propagandísticos y todas sus maniobras en general hacia la muchedumbre, recurriendo e invocando la sensibilidad del sentir más grosero, tosco, rústico, basto, ordinario, inculto y elemental de ésta para legitimarse en el poder y alcanzar sus propios objetivos, teniendo en cuenta superficialmente los intereses reales de un país, pues su único objetivo es la conquista y mantenimiento del poder (Bovero, 2000).

Ante este panorama, la muchedumbre se subyuga y siente que, a través del oclócrata, ejerce el poder y que su propia situación personal mejora, aunque esté desplomándose en la más profunda crisis de miseria, pero jamás pierde la esperanza en términos de una certeza delirante. Sus limitaciones educacionales, culturales, sociales, económicas, raciales le impiden ver la realidad y queda a merced de ese sujeto manipulador que lo controla mientras disfruta de su poder. Es por ello por lo que, en buena medida, es la muchedumbre la que sostiene y mantiene al oclócrata en ejercicio del poder (Romero *et al.,* 2005).

El oclócrata asume el papel del caudillo carismático como lo hizo Hugo Chávez en su momento, y como lo está haciendo Nicolas Maduro Moro hoy en día, dotado de la capacidad intuitiva de adaptar materiales simbólicos a las necesidades de la muchedumbre haciéndoles creer a estos que va a satisfacer las más inmediatas de sus necesidades básicas para, de esa forma, mantener su adhesión de ese determinado sector social inmerso en la

ignorancia y en la desesperanza, y que, ante la manipulación del oclócrata, se rinde y entrega a éste con una fe ciega.

En el desarrollo de su política, el oclócrata Nicolas Maduro Moro sólo tiene en cuenta de una forma superficial y ordinaria los verdaderos y reales intereses del país, dirigiendo siempre su objetivo a la conquista y al mantenimiento de su poder personal o de su grupo de colaboradores más cercano, este se vale y hace uso de la demagogia apelando a las emociones irracionales mediante estrategias como la promoción de discriminaciones, fanatismos y sentimientos nacionalistas exacerbados; el fomento de los miedos e inquietudes irracionales; la creación de deseos injustificados o inalcanzables, frecuentemente mediante el uso de un verbo encendido o vulgar, o una repetida retórica generalmente soez y plena de descalificaciones a sus opositores, con miras a permitirse el control y del dominio de la muchedumbre que hace valer sus propias instancias inmediatas e incontroladas frases a grito de "ahora el poder es el pueblo".

Dentro de esas instancias de la muchedumbre puede mencionarse los consejos comunales socialista, las milicias populares socialista, los escuadrones socialistas para la vigilancia de los comerciantes ante supuestas e imaginarias escaladas ilegales de precios de los productos de la canasta básica alimentaria, constitución de un partido único y, en fin, cualquier tipo de organización que haga creer a la muchedumbre que es depositaria del poder originario (Romero y Benayas, 2018).

Por ello, para poder ejercer el gobierno mediante la práctica demagógica u oclocrática, el jefe político debe preguntarle continuamente e incesantemente en tiempo real todos los sentimientos antes mencionados a todo el pueblo de su nación, es decir, a la muchedumbre para poder instaurar su discurso manipulador que le permita acceder su continuidad efectiva en el poder y su gobernabilidad necesaria; los actos de gobierno derivados de las peticiones masivas son definitivamente muy temporales, originales y espontáneos, si se le suma y se les une, una mezcla la complejidad de un Estado hoy día, entonces se tendrá que conceptualizar un contexto verdadero y real de la inviabilidad de ejercitar o desempeñar éste tipo de gobierno oclocratico.

Por lo que se deduce que es inverosímil emprender y ejecutar esta forma de gobierno verdaderamente, por lo que solo se proporciona como una alusión y/o mención de la cultura general, no así en su ejercicio continuo y efectivo en casi todos los procedimientos eleccionarios de casi todos los países por parte de la mayoría de los políticos y organización con esos fines (Bolívar, 2013).

Esto significa que el oclócrata utiliza al populismo, como a otro cualquier mecanismo que le permita en el momento y las circunstancias el control de la muchedumbre, de manera que sea visto en un momento como un caudillo que ejerce gobierno a través de un poder arbitrario no subordinado a normas

ni restricciones y en nombre de una "causa común" mediante la cual asocia su intereses particulares con los interese de sus seguidores, o como un gran líder o dirigente populista, haciendo uso de un léxico común con el de sus seguidores y con un cierto grado de identificación entre éstos y el emisor del mensaje, incorporando para ello varios elementos, componentes o principios, como la tradición, para lo cual fabrica un mensaje propio eficaz como son los ataque a la clase burguesa, a la clase media profesional, a los empresarios, a los políticos opositores, entre otros, el cual está destinado a ganar la reacción y el respaldo favorable de la muchedumbre.

Para ejecutar su modelo político, el oclócrata acude al modelo burócrata autoritario cuenta, además con respaldo de las fuerzas armadas militares, con comités de defensa, grupos de irregulares armados o no y, en fin, cualquier mecanismo que haga sentir a la muchedumbre que ella es la que manda, con esta tácticas ejercer el control social e impide las prácticas democráticas y el ejercicio de la libertad (Villarroel, 2003).

Pero, como sostiene Rousseau a la oclocracia le falta la piedra angular, es decir, la voluntad general de unos ciudadanos conscientes de su situación y de sus necesidades, una voluntad constituida y dispuesta para tomar decisiones y para desempeñar su dominio de una legitimización plena, de lo que viene a ser el *demo*, en el sentido exacto de la palabra pueblo. Puede decirse, por tanto, que, en la oclocracia la legitimidad que otorga el pueblo está corrupta, porque carece de los elementos racionales que asigna Hobbes al pueblo (Beck, 1998).

4. La oclocracia venezolana. Un problema más educacional y cultural que económico o ideológico

Avanzado ya en la narrativa en esta parte, es conviene hacer el siguiente análisis, si será necesario, como lo expresaba el historiador precristiano, si con la aparición de los individuos providenciales que reorienten la tergiversada oclocracia hacia una transformación de la democracia participativa, para la exclusión de un gobierno oclocratico en la cual el seudo líder de turno solamente puede aspirar a un mandato vitalicio alcanzado mediante la rapacería y el escamoteo, para dar paso a la reposición de un sistema político que sea resultado de la intención y el deseo de una masa social que está constituido por los ciudadanos sensatos a cerca de su posición, situación y de sus necesidades, carencias y obligaciones con una ansia compuesta y dispuestos y presto con la firmeza y entereza para la toma de decisiones y ejercitar así su mando de legitimación en un modo de proceder pleno, sin tener que aguardar, por esos individuos providenciales que le restituya su deseable modo de gobierno, como lo es la democracia (Brewer-Carías, 2002).

Porque, en la realidad que se vive a diario, se tiene la sensación de que la actual aldea globalizada que llamamos mundo se encuentra en una fase vertical de un espeluznante descenso de gobiernos que se perfilan hacia una oclocracia segura, esto acontece cuando el populismo con buen maestro en el ejercicio cínico de la tergiversación devora países en Hispanoamérica. Es la oclocracia la que sufren los países gobernados por regímenes teocráticos; o si el adoctrinamiento y la censura educacional o cultural a que el oclócrata quiere someter a su pueblo a la fuerza mediante el pensamiento débil y único de la posmodernidad, es una manifestación patológica de la oclocracia; o si la estúpida obsesión nacionalista con la que mediocres arribistas de limitada educación y cultura quieren echar por tierra logros de los gobierno que los antecedieron, es pura y simple oclocracia (Bonal, 2006).

Entonces, qué hacer para evitar la anaciclosis de la que hacía referencia el filósofo de la antigua Grecia Polibio, si el mundo, y en particular la Hispanoamérica enfrenta una fase de declive mundial hacia la oclocracia. Entonces surgen las siguientes interrogantes ¿Cómo mantener nuestras libertades en democracia y evitar que se repita la anaciclosis de Polibio? ¿Será tal vez recuperando los valores perdidos? O ¿Tal vez sacar del baúl de los recuerdos el derecho natural que nos dice que no es lícito legislar, ni siquiera democráticamente, contra la naturaleza humana? O ¿Tal vez formarnos debidamente e inculcar a nuestra generación de relevo criterios de hombres idealistas, es decir, aquellas personas capaces de usar su imaginación para crear ideales genuinos y que son capaces de seguir ilusiones e ideales de perfección muy altos?

Tal vez algunas de esas respuestas sobre lo antes planteado se pueden encontrar en aquellas insignes expresiones del ideal del Libertador Simón Bolívar, como lo son: “Moral y luces son nuestras primeras necesidades”, “Un pueblo ignorante es un instrumento ciego de su propia destrucción”. Con esto quiso afirmar que la ignorancia política es la causante de la pobreza extrema en que viven más de veintiocho millones de venezolanos, porque siguen eligiendo por los mismos ineptos, los mismos corruptos, los mismos ladrones, entre otro, que los ilusionan y que manipulan sus sentimientos o necesidades como pueblo.

El fenómeno político que está sucediendo en la actualidad en la sociedad venezolana no es extraño si dedicamos un tiempo a hacer un repaso en su historia republicana. Son ciclos, así, los reconoció Polibio, quien identifico las seis etapas que se acontecen cada vez que un régimen se degenera o entra en crisis: monarquía, tiranía, aristocracia, oligarquía, democracia y oclocracia.

Pero ¿Qué es entonces la política y qué es lo político? La política es una ciencia que trata del gobierno y de la forma como se organizan las sociedades humanas, fundamentalmente la de los estados. Es una actividad de acción social de los que gobiernan o aspiran a gobernar sobre los asuntos

que afectan a la sociedad o a un país, ante sus necesidades comunes y más aún, los intereses contrapuestos.

Mientras que el político es una persona que se dedica a realizar actividades políticas, es una especie de servidor que nunca, jamás, debe servirse del mandato que le fue otorgado para beneficiarse, enriquecerse o favorecerse. También puede referirse a cualquier persona afiliada a una organización o asociación o grupo que despliegue una actividad o labor y/o función partidaria, en suma y menos en perjuicio de ese colectivo en general que lo eligió o escogió encomendándole su disposición como guía en la toma de decisiones instituyéndolo como su administrador, su dirigente, su apoderado, su regente, su líder conductor, su jefe, por el honor y ello constituye con independencia de si ostentan o no algún cargo público (Tarabay y Perinat, 2011).

En la Venezuela de las últimas dos décadas se dejó de hacer política y disminuyó patéticamente el número y la significación de los actores político. Una auténtica oligarquía, una camarilla, un caudillismo, una organización de tipo criminal se levantó y controla el país para medrarlo, secarlo, privarlo de todo aquello que tiene valor y las ejecutorias se cumplen a cambio de un discurso falaz y de una reacción difícil, cobarde, costosa de los destinatarios del poder que los han dejado y dejan hacer a placer sus desmanes y traición (Torres, 2008).

Entonces el conflicto político social venezolano está más determinado por factores culturales y educacionales que económicos o ideológicos. La sociedad venezolana a lo largo de estas dos últimas décadas de vida republicana se ha convertido en una sociedad de la plebe, la chusma, de las muchedumbres vulgar, grosera, ignorante y cargada de vulgaridad, esto se debe a su baja formación cultural, moral y educacional, muchos políticos y representantes gremiales que ostentan o no algún cargo público carecen de ideas propias, desconocen las normas y carecen de un léxico o vocabulario educado, tanto en lo político, así como en lo moral que acaten, que honren y respeten la honorabilidad de sus propios cargos y funciones como servidor público, y la de los ciudadanos, es por esto que escogen la vía errada como lo es la opresión, el despotismo, la sumisión, el dominio y el abuso de las masas son las característica modernas de los políticos de hoy, estos emplean el poder cedido para enriquecerse a sí mismos y sus acólitos (Romero y Benayas, 2018).

Esto es producto de que se ha pasado por alto el problema cultural de las mentalidades, investigaciones recientes muestran que los excluidos son presa de la indefensión aprendida, carecen de un horizonte de vida mejor, sus disposiciones y preparación para una actividad productiva, son prácticamente inexistentes.

La exclusión social, por cuestiones culturales e incluso educacionales causa como efecto la pobreza, lo que trae como primera consecuencia que los excluidos socialmente vivan en un mundo socialmente desintegrado; la convivencia no está organizada, no afrontan de manera coordinada los problemas que surgen esto genera la ausencia de normas de la vida cívica, lo cual, genera la casi total inexistencia de participación ciudadana, ya que se mentalizan que como pobres excluidos no tienen el derecho de la capacidad para tomar decisiones en los asuntos locales o nacionales que les afectan. En términos modernos, los pobres excluidos no disponen de capital humano ni de capital social cultural comunitario (Tarabay y Perinat, 2011).

En este artículo se quiere hacer hincapié en un punto tan relevante; como lo es el aspecto cultural y educacional más que el aspecto económico e ideológico del sistema democrático venezolano y su degeneración. La cultura es un concepto "poliédrico", tiene muchas facetas. Entre ellas: las costumbres, las normas, la vida familiar, el trabajo y el ocio, el lenguaje y las instituciones (la escolar entre otras) han sido subsumidas bajo el lema de cultura.

Sin embargo, a un nivel de mayor conceptualización, cultura es un modo de confrontar la vida, una percepción del mundo. La cultura es el conjunto de conocimientos e ideas no especializados, el discernimiento, las creencias adquiridas para interpretar la realidad, la orientación y disposición para comportarse frente a ésta. También puede ser la agrupación de conocimientos, competencias, ideas, tradiciones y costumbres que caracterizan a un pueblo, a una clase social, a una nación o Estado, a una época, entre otras.

Tiene el aspecto cultural influencia sobre el crecimiento económico y sobre el aspecto político, pues si todas las investigaciones actuales no dudan en considerar el factor cultural como esencial en la promoción del desarrollo de una nación en su sistema económico como político social. Ya que lo cultural tiene una faceta que tiene que ver con el componente mental (representacional) que son las creencias, valores, disposiciones, normas, ideologías, entre otras (Martinell, 2010).

Por lo antes mencionado una parte de la sociedad venezolana presenta ese componente mental que son las creencias, valores, normas compartidas, que son obstáculo a los modos de funcionamiento de una sociedad que crea beneficios económico social y, por lo tanto, político.

De esa mentalidad adoptada por una parte de la sociedad venezolana se transcriben en una serie de dualidades que ofrecen el contraste entre lo que denomina la psicología moderna mentalidad premoderna o tradicional y la moderna. La mentalidad premoderna sustenta la creencia de que las personas tienen poco control sobre los sucesos que les afectan, a ellos

mismos o a la sociedad en general, es decir, en los términos clásicos de la psicología su "*locus of control*" es externo. Todo lo que les pasa (no pueden salir de su estado de pobreza cultural o espiritual porque no tienen empleo, sufren algún tipo de accidente o sus hijos fracasan…) es el resultado producto de agentes ajenos a la sociedad: Dios, la suerte, el destino. Asimismo, la mentalidad premoderna también actúa en función de las recompensas inmediatas (Hernández, 2018).

Cuando una sociedad como la venezolana sigue este patrón dual sobre todo basado en la concepción del pensamiento tradicional, llegan a creer que todas las regulaciones sociales están sujetas, subordinadas o dependiente a los intereses particulares y, para eludir o esquivar la normativa legal, se resguarda apelando al vinculo de la amistad, de la afiliación a una organización o asociación o fracción o partido político, lo cual escenifica el estrato magnífico para que este que contribuya a la degeneración de la democracia en una oclocracia como esta sucediendo hoy en día.

Una de las mayores riquezas de una sociedad es su nivel educativo lo que hace indiscutible no entender que entre el desarrollo económico y el desarrollo humano hay una onda relación de recíproca alimentación. Un considerable y sobresaliente crecimiento humano a concesión de la educación lo que se traduce en desarrollo económico, ya que esto incide en la creación de capital humano. Recíprocamente, el desarrollo económico redunda en desarrollo humano, entre otras cosas a través de un incremento en la educación y su calidad. En la medida que se asume que la educación hace de correa de transmisión entre desarrollo humano y el económico las sociedades avanzan (Rey, 1989).

Una de las consecuencias inmediata de lo que precede es que, dentro de un proyecto de desarrollo humano en un país como Venezuela en particular, la educación, por si sola, no es la fórmula mágica ni autosuficiente y debe ir emparentada con la política económico-social y con el aspecto cultural de su gente.

El motivo por el cual los individuos de una determinada sociedad se eduquen representa una las mejores herramientas para subyugar así el cerco nefasto de la pobreza. Sí se analiza la dinámica social que ha gestado esta situación de crisis política económico-social y cultural.

No puede haber cambios en una sociedad si esas propuestas no están basadas en la introducción de modificaciones sustanciales en el modo de vida de la sociedad venezolana, los cambios más relevantes y quizás los más difícil de solucionar, es en la dimensión educacional y cultural de dicha crisis.

Estos desniveles de cultura, educación, y costumbres no habían podido ser más sorprendente. Con la riqueza generada por la explotación petrolera la sociedad venezolana experimento una gran metamorfosis en sus procesos

culturales, lo que dio origen a una mayor vulnerabilidad cultural y, por ende, a una compleja fragilidad educacional al producirse un deterioro creciente y acelerado de la ya debilitada identidad nacional.

Sin embargo, se mencionan algunas iniciativas que han tenido éxito, pero se concluye que el problema del desarrollo humano es de índole sistémico y ha de atacarse mediante una política coordinada en los diversos frentes económico, educativo y cultural a la vez (Tarabay y Perinat, 2011).

La educación no puede por sí sola resolver los problemas sociales, sino que exige para ello que, paralelamente, se produzcan determinadas transformaciones en otros ámbitos de la sociedad. El énfasis, por tanto, se sitúa en las políticas globales, capaces de plantear estrategias convergentes en las esferas económica, social y política (Bonal, 2006).

El fundamentalismo del régimen de Nicolas Maduro solo puede mantenerse utilizando en beneficio propio la dinámica de no desarrollado de la sociedad. Ante esto, el llamado es siempre el mismo: a que los ciudadanos se informen, se eduquen, comprendan qué es (y qué no es) la democracia. Porque si no, las confusiones pueden darse y, ante la degeneración, estos lleguen a pensar erróneamente que la democracia es la que está fallando, y no es así. Al menos, esto no debe suceder en el caso los sistemas democráticos tradicionales como lo es en la democracia participativa, pero si sucede en la forma degenerada de la democracia. Sobre todo, cuando no se tiene un grado básico de cultura política sobre el sistema democrático o cuando se hacen reducciones en la educación de la sociedad o cuando se hacen restricciones en el aspecto de lo económico, o en lo "valórico" (moral) u otras parcelas de la convivencia social, sin entender que el sistema social es un todo holístico e inalienable.

Este es el quid del asunto, pues bien, la oclocracia juega a ser una apariencia de democracia, pero a diferencia de los regímenes dictatoriales que se visten y aparentan ser democráticos y ocultan su autoritarismo, en los regímenes oclocraticos el juego democrático parece seguir en su interior, pero es un juego con reglas cambiadas producto de la degeneración, el concepto de democracia es trastocado, y el pueblo entendido como una conciencia común y clara que equilibra sus tres tiempos (pasado, presente y futuro) se degrada a una muchedumbre, inmadura y cortoplacista, que no tiene esa conciencia y se entrega a las soluciones que los lideres oclócratas mesiánicos, omnipotentes e iluminados dictan.

Entonces, la oclocracia, es más que una democracia degenerada, esta podría concebirse como la **"mutilación de la democracia"**, ya que las instituciones, que en una democracia deben velar por ese equilibrio, se transforman en herramientas que potencian la mutilación y crean el ambiente de aparente democracia que obnubila a quienes se benefician del cuento, es la involución de democracia (Bovero, 2000).

Conclusiones

Como sostuvo Polibio, la oclocracia se presenta como el peor de todos los sistemas políticos, el último estado de la degeneración del poder. La oclocracia tiene la apariencia de una democracia, pero mientras ésta se basa en el equilibrio entre derechos, libertades e igualdades, y en el no atropello de la mayoría a la minoría, la oclocracia pervierte sus instituciones y mutila el concepto, para halagar el deseo de las masas (muchedumbre).

Inmersa en problemas sociales se encuentra la sociedad venezolana en las dos últimas décadas de su vida republicana, debido a la degeneración de su sistema democrático, el conflicto político social venezolano está más determinado por factores culturales y educacionales que económicos o ideológicos. Es por ello por lo que la cultura por ser un concepto "poliédrico", tiene muchas facetas. Entre ellas: las costumbres, las normas, la vida familiar, el trabajo y el ocio, el lenguaje y las instituciones (la escolar entre otras) han sido subsumidas bajo el lema de cultura.

La sociedad venezolana a lo largo de estas dos últimas décadas de vida republicana se ha parte de esta se transformado en una sociedad sin cultura que muchos han denominado la plebe, la chusma, de las muchedumbres vulgar, grosera, ignorante y cargada de vulgaridad, esto se debe a su baja formación moral y educacional.

Es en este momento, donde aparecen individuos como Hugo Chávez y luego su sucesor Nicolas Maduro que ofrecen la sustitución de la democracia por la **oclocracia**, último escalón de la degeneración de la democracia. Es el gobierno de la muchedumbre, de la gente, de la masa.

La oclocracia se puede prevenir, desarrollando una cultura cívica que comprenda lo necesario de los equilibrios del sistema como elemento indispensable para el avance del progreso social y la educación (no sólo la instrucción escolar o profesional) es la clave.

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Theoretical and practical views of political integration in Central and Eastern Europe

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Abstract

The objective of the work was to analyze integration theories such as federalism, functionalism, neofunctionalism, the multilevel governance model and the interstate concept. Using the systemic-integral method, we analyze the main interpretations of modern integration models. The study also used special methods typical of international relations theory**.** The interstate concept is the most effective, because without denying the importance of integration, it focuses on the preservation of cultural and economic diversity. The experience of Poland, the Czech Republic, and the Baltic States, in particular Latvia, is a valuable integrating example for Ukraine. The results summarize that the countries analyzed received several advantages for the economic and military spheres through integration processes. It is concluded that in the experience of integration of the Balkans and the central-eastern countries, the importance of European integration processes is evident. The comparison of Ukraine and Latvia showed the importance of being a member of the North Atlantic Alliance for security guarantees and political

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consolidation. At the same time, the Czech Republic's accession to NATO has contributed to the reform and modernization of military affairs.

Keywords: integration theory; international relations; Eastern Europe; geopolitics; Central Europe.

Puntos de vista teóricos y prácticos de la integración política en Europa Central y del Este

Resumen

El objetivo del trabajo fue analizar teorías de integración como el federalismo, el funcionalismo, el neofuncionalismo, el modelo de gobernanza multinivel y el concepto interestatal. Utilizando el método sistémico-integral, analizamos las principales interpretaciones de los modelos modernos de integración. El estudio también utilizó métodos especiales típicos de la teoría de las relaciones internacionales**.** El concepto interestatal es el más eficaz, porque sin negar la importancia de la integración, se centra en la preservación de la diversidad cultural y económica. La experiencia de Polonia, la República Checa y los Estados bálticos, en particular Letonia, es un valioso ejemplo integrador para Ucrania. Los resultados resumen que los países analizados recibieron una serie de ventajas para las esferas económica y militar mediante procesos de integración. Se concluye que en la experiencia de integración de los Balcanes y de los países centro-orientales, se hace patente la importancia de los procesos de integración europea. La comparación de Ucrania y Letonia mostró la importancia de ser miembro de la Alianza del Atlántico Norte para las garantías de seguridad y la consolidación política. Al mismo tiempo, la adhesión de la República Checa a la OTAN ha contribuido a la reforma y modernización de los asuntos militares.

Palabras clave: teoría de integración; relaciones internacionales; Europa del este; geopolítica; Europa central.

Introduction

The development of modern politics is dominated by the processes of international integration and globalization. Political integration occupies a separate place in this system. It is the process of the convergence of two or more political structures that promote cooperation. In a narrower sense, political integration is a peculiar formation of a certain integral complex of political systems at the interstate level.

One of the manifestations of such integration is the process of unification of these structures. In this case, both formal and informal institutions are necessary for the joint solution of any issues. Modern experts prove that in an integrated society the degree of interaction between the participants of integration and the formation of common interests and values significantly improves.

The coverage of basic theories and concepts of political integration is an important experience for currently actively developing states, however, also for Ukraine. Despite this, the experience of Poland, the Czech Republic, and the Baltic states, particularly Latvia, are particularly valuable examples of Ukraine.

Although these countries, like Ukraine, were part of the Soviet Union and the Socialist Bloc, and after its collapse, they suffered several social, economic, and political problems, yet they successfully integrated into the European space. Thus, the purpose of our article is to highlight the main theories and concepts of political integration both theoretically and practically.

However, let us note that conceptually political theory does not act as a determinant of political decisions neither at the initial stage of formation of the main forms of integration nor today. On the other hand, political theoretical studies, the object of which is to study the evolution of integration, its components, and algorithms of action, are rather ambiguous.

1. Methods

The methodological basis of this study is the analysis of models of political integration. At the same time, general theoretical research methods, primarily synthesis, induction, and deduction, were used to cover the theoretical problem of the conceptual foundations of integration. As a result of applying the method of scientific abstraction, it was possible to move from unrelated judgments (theoretical concepts of integration) to specific conclusions (to the coverage of the practical implementation of integration models).

In addition, we used the historical method of research, which traced the development of the concepts of political integration in Central and Eastern Europe through the prism of historical changes. Comparativists' method is also important for our research, using which modern integration models are compared. In particular, the work reflects the main characteristics of the globalist, regional, sub-regional approaches. At the same time, using the systemic and holistic method, we have parsed the interpretation of modern integration models, highlighting the common features. We also used special methods of research of the theory of international relations.

Note that because of the development of integration processes in the world and the emergence of various integration associations, many theories and concepts of integration began to be actively developed and implemented. Both classical theories of international relations (in particular, realism, federalism, functionalism, etc.) and special concepts of integration (for example, multilevel governance or the theory of multilevel governance, the concept of confederation, the theory of global regionalism, etc.) were used when writing on the problem of integration.

In addition, the study of the European integration process applied a comprehensive approach, which in turn allows us to understand European integration as a holistic process with a characteristic internal development, highlighting the features of its qualitative features.

The theoretical part of our work is formed from the analysis of the works of the classics of political integration theory. In particular, the work presents the opinions of Mitrany (1966) and their conclusions about the model of a flexible integration concept. At the same time Haas (1976) through the prism of neo-functionalism analyzed the development of world integration processes. Hoffmann (2019) as a proponent of the interstate concept of political integration, characterized the possibilities of integration processes in the world.

The author defends the view of self-determination of nations as a source of differences between states. Of contemporary works, we should highlight the work of Bergmann (2018) who analyzed the peculiarities of the development of European integration through the lens of neo-functionalism analysis. Bielasiak (2019) analyzed integration challenges based on the analysis of contemporary transformational changes.

2. Results

Since the early 2000s, integration aspirations around the world have evolved and changed dynamically. At present, many different-level political blocs have been formed. Most of them have declared their main goal to reach the integration level of economic cooperation. We are talking primarily about such associations as the WTO, NEFTA, and the European Union.

At the same time, the problem of integration in the scientific-theoretical plane is, on the one hand, frequently mentioned in various contexts, and on the other hand, insufficiently investigated (especially given the shifting nature of the topic before the modern transformational challenges). In addition, the main ideas embedded in integration processes are often solely empirical in nature, without proper theoretical comprehension.

3. Peculiarities of the interpretation of the concept of integration in modern political science

The definition of the concept of integration was proposed and introduced into scientific circulation by the founder of structural functionalism, T. Parson. This researcher included two main components in this concept: internal compatibility of integration elements and maintenance of specific conditions. In some works, there is an opinion that integration is a complex process of interaction between states, denoted by two elements: economic essence and legal form (Bielasiak, 2019). As defined by the Oxford University Dictionary, integration is the specific act or process of two or more parts functioning together.

Thus, integration processes organized within an established system led to an increase in its integrity and organization. At the same time, different parts of integration may receive different levels of autonomy. Nelson (2019) believes that the term "integration" has implications for strengthening the interconnectedness and orderliness of individual parts of a social system.

At the same time, one of the well-known theorists of the non-functional approach to integration, E. Haas, defined it as "the process by which political actors... transfer their trust and political activity to another center whose institutions have a greater jurisdiction that goes beyond that previously existing in nation-states" (Haas, 2004: 34).

Other researchers explain the phenomenon of integration purely through the legal aspect. Thus, the development of integration processes is viewed through the prism of legal doctrine, which played a prominent role in assessing the extent of integration in the 1980s.

3.1. Theoretical-conceptual level of understanding political integration

Currently, there are several approaches to defining the concepts of integration in the professional literature. A division into globalist, regional, and subregional approaches is accepted. The first approach implies gradual comprehensive integration on both regional and global levels with the priority right of supranational structures.

In addition, a significant feature of this approach is the multicultural nature of society. Regional integration is the main form of integration, limited by territorial boundaries.

Vivid examples of regional integration processes are Western European models. They are represented in several concepts. In particular, federalism (or constitutionalism) is a theoretical approach to comprehending integration processes, established after World War II. This concept

became one of the basic theories of integration. This theory is based on the basic principle of federalism, highlighted by C. Wier, according to which sovereignty is divided between two territorially separated levels of government (Butorina, 2020). Integration formed according to this principle requires the formation of two levels of government (federal and state) - separated but working in a coordinated way.

Another approach is the multifunctional approach. It is based on a conceptual understanding of the phenomenon of integration. According to the supporters of this concept, world integration is inevitable, because it is caused by modern economic modernization.

At the same time, neo-functionalists believe that integration needs cannot be based solely on economic interests. In their view, the economic part of integration matters only for the achievement of the higher goal - political integration. The founder of the direction of neo-functionalism is E. Haas. He defined this concept as spillover (Haas, 1976). Consequently, according to it, integration processes should gradually spread from one sphere to another through the interdependence of different processes within the center.

According to neo-functionalism, the integration of states should start from the economic sphere, but by developing cooperation in this sphere, its participants gradually extend it to other spheres. It is a question of social, cultural, legal, and other areas of human activity. A valuable example of applying neo-functionalism in practice can be the process of gradual involvement of the former socialist camp countries into the European integration center (Haas, 2004).

The point is that first the European Economic Union (EEC) and the states of Central and Eastern Europe concluded multilateral agreements on trade and cooperation and then switched to associate membership. This resulted in their inclusion in the European Union.

The theory of “flexible integration” was developed by both French and British politicians. It became especially popular after the 1970s when Britain, Ireland, and Denmark joined the EU. According to the general concept of “flexible integration,” each state has a different degree of integration aspirations. At the same time, the British vision of this concept is somewhat different. J. Major, the British Prime Minister described the main foundations of the British vision of this concept. Behind him the main idea is that European integration should expand rather than deepen, respectively, the European Union should have more flexibility (Mitrany, 2006). At the same time, this politician proposed to give EU members the right to choose and decide in which EU projects they will participate.

The third approach is the interstate concept, which emerged in the 1960s and was the main rival of the functional theory of integration. This

approach is guided by supporters of state-centered views on the processes of international cooperation. Well-known representatives of this concept are such scientists as S. Hoffman, E. Haas, E. Moravchyk. The basis of this theory is the understanding of the principle of self-determination of nations as a source of differences between states.

According to the representatives of this approach, integration is a pluralistic phenomenon that depends on various factors. S. Hoffmann concluded that states enter into regional associations primarily through transformational processes on the world stage (Hoffmann, 2019). A vivid example of the realization of this concept is the reorientation of the former socialist states in the late 1980s.

Recently the fourth concept has also become popular. It is a model of multilevel management. It is actively implemented and developed by such scientists as C. Blank and L. Haug. According to this concept, there are many levels of government in the political world, where a special interaction of political forces takes place.

At the same time, as a result of the development of the EEC and its transformation in the early 1990s, the EU deepened and expanded integration. Thus, new integration concepts emerged. Their authors were mostly socio-political figures and European officials who reflected in them the new realities of the unification process. Let us recall such modern theories as the "hardcore" theory of W. Schäuble and C. Clamers, the "confederation" theory of F. Mitterrand.

W. Schäuble, a German politician, later Minister of Finance, proposed the "hardcore" theory. Proponents of this concept believe that the development of the EU should be based on federalism and systemicism (Macrae, 2016). At the same time, the main core should consist of powerful European states (in particular, Germany and France). In addition, W. Schäuble suggests introducing long transition periods for Central and Eastern European countries wishing to integrate into the EU. Former French President F. Mitterrand proposed the theory of "confederation".

It became widespread in the late 1990s. This concept also suggested that a "solid core" (a group of the most developed countries ready to deepen integration processes) should be singled out within the European Union).

Many proponents have the concept of confederation as the basis of the EU's integration potential. Thus, a large number of publications on the structure of even the modern EU indicate its federal and confederal roots (Butorina, 2020). The comparison with confederation can be considered quite relevant because we are talking about a loose union of states united by common goals. At the same time, the autonomy of these states is not questioned, so this arrangement should satisfy all participants of the EU enlargement.

Proponents of the confederal model of interstate cooperation encounter certain problems in their theoretical conclusions. In particular, a confederation is a temporary formation, which aims to implement a common goal (usually a military alliance, a trade union, etc.). Modern super-state formations do not have primary sovereignty; moreover, the purpose of their creation is not temporary and generally theoretical (Macrae, 2016). Accordingly, this concept will still require further reflection.

3.2. Political Integration of the Baltic and Central European Countries: Experience for Ukraine

For Ukraine, as an Eastern European democratic state, the most valuable experience is that of the Baltic states, which are now integrated into the structures of the European Union and NATO. For example, Latvia, like Ukraine, was a part of the Soviet Union, and after its collapse, it received a number of social, economic, and political problems.

We believe that the country's successful integration has occurred due to a number of factors, chief among which are the stability factor (political consolidation), economic cooperation, and military integration. In particular, the constancy of political relations in the country helped Latvia gain EU membership.

Ukraine in recent years has also been declaring an unchanged European vector of development, but in practice, political instability has led to severe manipulation within the state. Today they are exacerbated by the hybrid war with the Russian Federation and the temporary loss of control over Crimea (Mereniuk and Mereniuk, 2019). Under such conditions, it is extremely difficult to reach a socio-political consensus, although sympathizers of Ukraine's European future have significantly increased because of Russian aggression.

In Latvia during the 1990s, one can trace a rather active change of governments, but the main direction of the country's foreign policy remained the same. This country is a member of the WTO, as well as Ukraine. Accession to the WTO demonstrates the globalization of trade and economic relations and interstate cooperation.

At the same time, Ukraine and Latvia are integrated into the European Free Trade Association. Although the growth rate of the Ukrainian economy is slow for objective reasons, it is quite optimistic in a global perspective. Accordingly, economic cooperation can become an important basis for strengthening cooperation between Ukraine and the EU.

An important aspect is a military cooperation. Latvia is a member of NATO. This creates a certain aura of stability and confidence not only for the society and political elite but also for investors and entrepreneurs.

Belonging to this military-political bloc is an important achievement of the Baltic country. In Ukraine, discussions about NATO membership have been going on since the 1990s. Neither government officials nor North Atlantic Alliance officials have long been able to establish specific markers for further cooperation (Kostiukevych *et al.,* 2020). Only with the outbreak of military aggression in eastern Ukraine and Crimea did the understanding of missed opportunities emerge.

However, even today in the Ukrainian society there is a considerable layer of those who perceive Ukraine's integration aspirations negatively. Although the percentage of such citizens is decreasing, it creates opportunities (along with a direct military threat from Russia) for further stalling of integration processes.

At the same time, a fairly good example, proving the prospects of the pro-European vector of the integration process of Ukraine is Poland. Like Ukraine, Poland is also a post-socialist state, and at the same time, these two countries had approximately the same starting opportunities at the beginning of transformational changes. In addition, these states used to have similar polarized political systems and economic structures.

However, for a long period, they developed in different ways. At present, Poland, back in the late twentieth century. In comparison with Ukraine, Poland has achieved significant economic achievements since the beginning of the twentieth century. It should be noted that from the period of Poland's inclusion in the EU, the country's economic growth has noticeably accelerated, and the rate of GDP increase was higher than the average European indicator in some periods (Picek, 2020).

At the same time, Poland's experience contradicts the claim that accession to the EU immediately leads to a decrease in trade with Eastern countries. Since Poland acceded to the EU, exports to the Asian region have increased significantly.

Despite this, after Poland acceded to the EU, the problem of unemployment has not been completely solved. Modern experts attribute Poland's high unemployment rate to a false policy of eliminating the coal and steel industries, which in turn led to heavy engineering (Nelson, 2019). This happened under the pressure of the EU's strict ecological foundations, which began to be practiced after the accession of the republic to the union.

Despite this, Poland's integration into the EU correlates with significant improvements in most indicators of the country's socio-economic sector. Such results have been achieved primarily due to the benefits offered by Poland's membership in the European Union (Picek, 2020). The opportunities significant economic benefits are the direct subsidies received by Poland within the framework of two priorities of the European Union.

It is a policy of equalization and support for agriculture. Apart from these subsidies, we can consider an increase in specific foreign investments (and not an increase in the repatriation of capital in Ukraine) as a practical benefit from joining the EU. We should note that 90 % of investments in Poland come from European and American companies (their joining the state is caused by the integration of the country into the common economic space system).

Thus, we believe that the process of Poland's integration into the EU was successful as a result of its demonstration of systematic and strong-willed actions, regardless of who led the country. Despite this, let us note that the accession to the European integration space became real also due to a progressive understanding of civil society, a positive attitude to the integration of trade unions, various non-governmental organizations, churches (Bielasiak, 2019). In addition, an important factor was the support of leading European countries, especially Germany and France.

In addition to European integration aspirations, Poland also has a separate cooperation treaty with the United States. Poland is also a strategic partner of the United States on the continent - there is not only cooperation between the states at the level of NATO, but also at the level of state relations.

The experience of the Czech Republic and Slovakia is a striking example of political integration. As a result of the collapse of the socialist bloc, the Euro-Atlantic and European integration of the Czech Republic and Slovakia are defined as the main priorities of the countries' national development.

It is worth mentioning that the Czech Republic applied for EU membership back in 1996 and was officially admitted to the union in 2004. Since then, the Czech Republic, as an EU member state, has been persistently involved in the implementation of leading parts of the EU's main program, primarily the Joint Foreign and Security Policy (JFDP) and the Eastern Partnership program. Within the JFDP, the Czech Republic, together with other EU member states, participated in international peacekeeping operations, the formation of European military tactical groups, etc.

We can consider the formation of basic prerequisites for the country's economic development to be a notable result of the Czech Republic's accession to the EU. One of the important factors in the Czech Republic's integration into the EU was its accession to the Schengen area. In 1999 the Czech Republic became a full member of NATO. At the same time, unlike the Baltic States, Romania, and Poland the main objective of this accession was not so much to guarantee the protection from Russia, but primarily the possibility to implement the potential of the Alliance to optimize the defense component of the Czech Republic.

Thus, as a result of Czech integration into NATO Czech military forces were reduced and a significant number of outdated weapons was decommissioned. Since 2005 Czech Army fully shifted to the contract principle. The reduction of the Czech armed forces not only saved a lot of money but also led to the inclusion of the country into the NATO Cooperative Security system. Besides, the Czech Republic needs to receive from NATO new modern weapons and military equipment. We believe that the Czech accession to the EU and NATO is a consistent and logical step, which provided the Czech Republic with progress in many spheres, primarily social, political, economic, and military.

2. Discussion

Modern globalization processes entail a wide interest among political theorists concerning the fate of future integration processes. We believe that this is not surprising, because, throughout history, states as separate political mechanisms have sought allies for the realization of common interests. In the Middle Ages, countries sought cooperation at the dynastic level, relying on dynastic marriages (Parshyn, 2018).

In modern times, interstate alliances joined this, the existence of which was active until the end of World War II. In 1945, the United Nations was created, and a short time later the formation of the EU began. Attempts to solve problems, particularly economic ones, jointly led to the emergence of super-state structures, a new trend in world political science (Sharma, 2021). Accordingly, contemporary scholarly debates continue not around the question of the necessity/unnecessity of integration, but regarding the optimal form of its implementation.

We believe that the model of interstate interaction remains quite promising. In particular, the credo "unity in diversity" is gradually becoming defined in modern Europe. This motto is perceived by the strongest players in modern politics - Germany and France. They are followed by other countries as well. Let us note that the broad interest in the regional peculiarities of politics and culture contributes to the fact that "lesser" countries take their rightful place in integration projects. This way is quite promising in terms of attracting new participants.

Modern political integration processes in Europe are not separated from the establishment of cooperation with the North Atlantic Alliance (Panova *et al.*, 2021). The Ukrainian experience indicates that in the current situation in Eastern Europe, political struggle and direct military aggression can hinder democratic processes and accession to the circle of other developed democracies. To avoid such challenges, the best option would be simultaneous integration into NATO structures, i.e., joining the politico-military alliance.

The Ukrainian authorities and society were not ready for such steps for a long time, for this reason, the circumstances are not in favor of the state, which finds itself in a difficult situation and under conditions of occupation of part of the territories (Mereniuk and Mereniuk, 2019). This negative experience should be indicative, important for understanding modern political processes.

It is difficult to predict the possible disintegration of European structures. After the UK leaves the EU as a result of Brexit, other countries may follow suit.

In particular, the Hungarian government's recent statement hides the prospect of leaving the single European political body (Macrae, 2016; Kolb *et al.*, 2021). We believe, however, that these crisis phenomena are temporary, but a new vector for the active development of integration processes in Europe will be the Balkan countries, which will already participate in the unification processes as independent countries.

We believe that serious challenges to the further strengthening of European integration will be the continuation of hybrid aggression by the Russian Federation, negative economic phenomena (recession due to the COVID-19 pandemic, etc.), and social tension (due to the emigration crisis). At the same time, the elimination of territorial contradictions and open military conflicts between the participants will be positive aspects of the integration processes. The primacy obtained by diplomatic methods of interaction is also an important "integration" achievement. Because of this favorable political atmosphere, integration projects, also including the EU, will receive a new impetus to further movement.

Conclusions

Contemporary processes of globalization pose questions to political scientists about the most effective ways of political integration. But it is not even a question of whether or not associations are necessary at all. Let us note that as of today there are several concepts of political integration. Among them, we will distinguish federalist, functional, multilevel governance model and interstate concept. We consider the latter to be the most effective because it is focused on the preservation of cultural diversity. Let us note that the formation of these paradigms took place during the XIX-XX centuries when the question of the formation of separate political interstate and supranational associations became acute.

The modern EU is evolving from interstate to a supranational association. At the same time, the principles of federalism (or the idea of building a pan-European America) have recently found much less support

than before. Probably it is about the problems of coexistence of different ethnic groups, which the U.S. authorities have faced to a much lesser extent - emigrants here settled sporadically (although, for example, within certain urban neighborhoods), whereas in Europe we are talking about cooperation between full-fledged ethnic groups that have lived on their land for centuries. Although there were precedents of disintegration as early as the 1990s (the breakup of Czechoslovakia), in the future the countries were united within the EU based on equal rights of nations. We believe that the next enlargement of the EU will take place at the expense of the Balkan countries, which will also become part of it as separate nations.

At the same time, even at the current stage of integration processes, some countries also return to individual interstate agreements. For example, Poland has concluded cooperation agreements with the United States, which creates an original center of influence in Europe. Similarly, all European countries are members of NATO. For Ukraine and its integration aspirations, these ties must be taken into account.

Destabilizing activities of the Russian Federation threaten Eastern Europe, but the countries' NATO membership blocks all Kremlin attempts to sow discord so far. At the same time, the comparison of Ukraine and Latvia demonstrated the importance of being part of the North Atlantic Alliance for security guarantees and the importance of political consolidation within the country. Now it is difficult for Ukraine to resist aggression because the long period of political uncertainty has not resulted in necessary and timely reforms.

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Case Management in Ukrainian Civil Justice: First Steps Ahead

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Abstract

The article aimed to analyze case management in civil justice in Ukraine. Ukraine is one of the members of the Council of Europe and declares its integration path towards the European Union. The Association Agreement between the EU and Ukraine was signed in 2014 and requires the approximation of national legislation, which led to reforms, covering various areas of legal regulation. In the research, the comparative method was used to analyze the legislative provisions of case management, together with the structural method and the historical method to reveal the background of the idea of case management in the past research of Roman Law. The authors concluded that the deep historical beginnings of case management are based on Roman law, and the idea of restoring this phenomenon is fully reasonable today. Finally, the implementation of case management in procedural legislation must be reassessed and adapted to the complex of the rights protection system, helping to transform the role of the court in the dynamics of the civil judicial process.

Keywords: civil justice; access to justice; the right to a fair trial; civil procedure; procedural legislation.

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Gestión de casos en la justicia civil de Ucrania: primeros pasos a seguir

Resumen

El artículo tuvo por objetivo analizar la gestión de casos en la justicia civil de Ucrania. Ucrania es uno de los miembros del Consejo de Europa y declara su camino de integración hacia la Unión Europea. El Acuerdo de Asociación entre la UE y Ucrania se firmó en 2014 y requiere la aproximación de la legislación nacional, que condujo a las reformas, cubriendo diversas áreas de la regulación legal. En la investigación se utilizaron el método comparativo para analizar las disposiciones legislativas de la gestión de casos, junto al método estructural y el método histórico para revelar el trasfondo de la idea de gestión de casos en la investigación pasada del Derecho Romano. Los autores llegaron a las conclusiones de que, los profundos inicios históricos de la gestión de casos se basan en el derecho romano y, en la actualidad, la idea de restauración de este fenómeno es plenamente razonable. Finalmente, la implementación de la gestión de casos en la legislación procesal debe reevaluarse y adaptarse al complejo del sistema de protección de derechos, ayudando a transformar el papel del tribunal en la dinámica del proceso judicial civil.

Palabras clave: justicia civil; acceso a la justicia; derecho a un juicio justo; procedimiento civil; legislación procesal.

Introduction

But you see, the courts don›t exist to give them justice - the courts exist to give them a chance at justice (The Verdict, direct by Sidney Lumet).

Today, in the context of significant paradigmatic shifts in the perception of law and global changes in public relations, legislative reforms shall reflect the real aspirations to build a genuine area of European justice, and Ukraine shall become an integral part of this process.

First, we want to draw attention to the very beginning of the court proceedings, lied far away in the Roman law. For this, we will sketch up the difference in *legis actiones* of the most ancient court procedure and the second procedure, which has completely changed the very idea of the interrelation between a judge and parties. In our opinion, that may be considered as a source of the late case management idea, which was blossom especially successfully in Great Britain, place of greatest impact of the praetorian Roman law.

Then we would like to describe the gradual introduction of the case management in the national civil justice system of Ukraine. (Izarova and Silvestri, 2018) This is one of the latest trends in the development of the civil process and its benefits are evident. With the help of modern technologies, the court can manage the organization of consideration as effectively as it is possible in each case.

The last research show that case management is not so modern, (Cornelius and Van Rhee, 2018; Tsuvina, 2020) due to its grounds in early German and Dutch civil procedure`s studies. As we see from the ideas of Lord H. Wolfe, the principle of organizing a case review includes the following components: the division of responsibilities between the parties and the court in choosing a procedure for consideration of the case; definition of specific terms for the conduct of procedural actions; observance of proportionality in matters of court costs. As it was noted by J. Sorabji, previous laissez-faire approach to case progression and party-control of litigation could generate unnecessary cost or delay (Sorabji, 2014)

Traditionally in Ukraine, the approach functioning with an authoritarian judge has been criticized as a Soviet Union heredity (Kroitor and Mamnitskyi, 2019; Tsuvina, 2020); so advocacy and the transfer of key roles to the parties are being introduced in the context of the establishment of an independent legal process in our state that meets the requirements of building a legal and democratic state. Anyway, it not so easy to pass over an old traditional approach in judiciary.

During the preparation of the CPC in 2004, the main task of civil justice was changed. In Article 2 of the CPC of the Ukrainian SSR in 1963, the task of civil proceedings was defined as protection of rights and legitimate interests of individuals, legal entities, and the state through comprehensive consideration and resolution of civil cases in full compliance with the current legislation (as amended on January 23, 1981). This was the basis for the almost infinite power of a judge in the Soviet process, which, to protect the rights and interests of individuals, even went beyond the boundaries of the claims filed in the case.

Ukrainian legislators decided to move away from the Soviet approach and to actively monitor the dynamics of the case and ensure fair, impartial, and timely consideration and resolution of civil matters in order to protect the challenged or contested rights and freedoms of individuals and legal entities. That is, the main emphasis of the work of the court was transferred to the consideration of the case, and not to the protection of rights or interests, which is fully justified in civil cases.

Accordingly, the judge was limited only in the examination of claims (namely: only on the request of individuals, within the limits of their claims and on the basis of the evidence submitted by the participants

in accordance with Article 11), also he was deprived of the opportunity to claim evidence or to appoint an examination (instead, the court was supposed to promote the full and complete clarification of the circumstances of the case as follows: explain their rights and obligations to the persons involved in the case, warn about the consequences of the commission or non-execution of procedural actions, promote the exercise of their rights under Article 10).

Concepts of the CPC are due to the change of the main task of civil justice, which should be effective in accordance with the CPC 2017. This testifies to the transition to a new law for the administration of justice in Ukraine and the introduction of a new approach to determining the role of judges and participants in the case in the organization of proceedings.

Accordingly, in the provisions of the new CPC, three components of the principle of organization of the case can be distinguished: the decision on the procedure of consideration of the case; establishment of the terms of commission of procedural actions; and also, the determination of legal expenses incurred by the parties.

1. Background of the Case Management in Roman Law Procedure

The introduction of the formulary process, in addition to simplifying proceedings resulted in the discovery of simplified and more convenient means of praetorial influence. On the contrary to the magistrate that played a passive role in the *legis actiones* procedure, the formulary role of the praetor became active, for example, the formulation of the formula depended entirely on the praetor. This makes us think about comparison with the case management in modern civil procedure in Europe.

If he refused to formulate the formula, then he stopped the progress of the process and made the plaintiffs civil right insignificant. Consequently, the praetor becomes a direct controller and litigant. Praetor could refuse to make the formula in cases when it immediately becomes clear to him that the plaintiff's claim, although justified jus civile, is still but unfair.

Also, the praetor was able to influence the relations between private individuals through "administrative" means like administrative orders and administrative regulations. If a person appeared to the praetor with a claim that did not have a basis in civil law, but in the opinion of the praetor was fair, he could make the corresponding formula and submit it to the judge's decision, assigning him to verify the actual data on the accusation of the defendant. Thus, along with lawsuits based on civil law (*actiones civiles*) there are praetorian actions (*actiones praetoriae*).

Sometimes the case was simplified: the praetor could apply "*fiction*" (the assumption or rejection of an existing circumstance that could not be disputed). In particular, the judge was given an order to act as if there was no certain circumstance (if the person lost his ability to act, this fact should not be considered when it comes to repayment of the debt).

In both the *legis actiones* procedure and in the *formulary procedure* there was a demand for the presence of both parties at the beginning of the proceedings, there was no proceedings in absentia. The official summons to court did not exist, the plaintiff himself provided the presence of the defendant in court. For this purpose, the previous measures remained, but the defendant's presence provided by force was replaced by a fine.

As a rule, the parties conducted the process personally but there was also procedural representation. There were two types of representatives: the cognitor and the procurator. A cognitor is a formal representative appointed by the principal in the presence of the opposite side after which he replaces the principal completely. Gaius states:

> (I. 4.83) Moreover, the attorney in an action is appointed by prescribed forms of words in the presence of the adverse party. The plaintiff appoints an attorney as follows: "Whereas, I am bringing an action against you (for example) to recover a certain tract of land; I appoint Lucius Titius my attorney against you in this matter." The adverse party makes his appointment as follows: "Whereas, you have brought an action against me to recover a tract of land, I appoint Publius Mævius my attorney against you in this matter." The plaintiff may make use of the following words: "Whereas, I desire to bring an action against you, I appoint Lucius Titius my attorney in this matter." The defendant says: "Whereas, you desire to bring an action against me, I appoint Publius Mævius my attorney in this matter." It makes no difference whether the attorney appointed is present, or absent; but if an absent person is appointed, he will only become the attorney if he accepts and undertakes the duties of the office (Gaius institutions. Text and trans. F. Dydynsky. Warsaw, 1892. XL, 540).

The principal for such representation could no longer file the same suit for the second time. The charge by the solution was addressed to the principal and not to the cognitor.

Procurator was a representative who was appointed informally and even, probably, without the knowledge of the opposite side. He could act in the interests of one of the parties without any mandate. After the procurator's process the principal could bring an action against the same defendant himself (therefore, the procurator demanded a guarantee of compensation for the defendant in the case of double recovery). The recovery by the prosecutor's suit was addressed to him, and not to the party he represented. Subsequently, the differences between such representatives as prosecutors and cognitor disappeared.

In the formulary procedure, the means of proof were more effective than those used in the *legis actiones* procedure. Means of proof were statements of the parties and testimonials; testimonies of witnesses (their number was not limited); written documents, which in the first place were the testimony of witnesses, recorded earlier, documents, stipulations, contracts, hereditary documents, accounting books. It should be noted that in the classical period there were documents of an official character. This led to the creation of special books, which contained records of legal facts, in particular, it is known that there was a real estate cadastre in Egypt, and from the age of Augustus the Romans recorded the births. Also, the means of proving were inspections of the object by a judge and expert opinions.

The evidence was provided by the parties and should have been based solely on the facts; the judge was free to evaluate the evidence presented by the parties.

Following the outcome of the case, a decision was made (*sententia*), which could not be appealed in our understanding of the word. At the same time, the plaintiff could contest the validity of the decision and request the appointment of a new judge. The defendant could contest the decision about seizure by suit.

The value of the decision was that it completely resolved the disputed legal relationships, was binding and unconditional. The decision established a new obligation between the parties instead of procedural legal relationships. The final decision was a guarantee against further contesting the law.

If the decision was of "not guilty", then all legal relations stopped. If the decision was of "guilty", then the issue of seizure was raised. The tool for such a penalty was an executive action or action judicati. The period of 30 days had to pass between the decision and the action judicati for the defendant to voluntarily decide. After 30 days the debtor`s property manager began selling all the property, even if its value was significantly higher than the amount of the debt. In certain categories of cases, a procedure for the sale of property was foreseen. Subsequently such a form of forced execution became obligatory.

To briefly summaries, we may mention the following: the most relevant today issue is the magistrate or judge acquired the functions of control or organization of hearing of the case. This is the heart of the idea of case management in procedure, which may be a perfect ground for all the further national civil procedure models of Europe.

2. Choosing the Order of the Case Consideration

According to the law, the judge decides on the determination of the procedure for reviewing the case, namely, general or simplified. (Izarova and Flejszar, 2018) The ability to initiate simplified proceedings, however, still belongs to the plaintiff, in accordance with Article 184 (2) of the CPC, as well as Article 276, which is virtually duplicated. At the same time, Article 277 (1) states that the court itself decides on the consideration of a case in the form of a simplified procedure in a ruling on opening of proceedings in a case (small or labour); and only in accordance with Part 2 - in all other cases it is done in view of the consideration of the relevant petition. That is, the court has quite vast powers to decide in which order the case will be considered. We should immediately note that the ruling in which the court decides on the procedure for reviewing the case – general or simplified – is not challenged separately from the final decision of the court.

The court also has the right to decide whether to appoint a court hearing in a simplified proceeding, in accordance with Article 279, paragraph 5, the court will consider the case in a simplified procedure without notice to the parties on the materials available in the case, in the absence of a petition of either of the parties. In resolving this issue, in accordance with the CPC, the court takes into account the price of the claim, its category and complexity, as well as the method of protection, the category and complexity of the case, the evidence, necessity of expert examination or summon witnesses, the parties and other participants in the case; if there is a public interest, the value for the parties and their opinion concerning the simplified procedure.

These conditions are important for solving a case. In particular, the importance of considering a case for the parties should really have an impact on the choice of the procedure for the protection of rights, so the question of taking into account the opinion of the parties on the consideration of the case in the order of simplified proceedings should be raised. In order to protect their rights, applicants will choose the most effective procedure – simplified, which will allow them to optimize costs and time, or general, which will enable them to use all available tools to achieve the result. At the same time, the simplification should not mean narrowing or reduction of the rights of the persons involved in the case, but only the right to choose the procedure for consideration of the case and the protection of their rights. This choice must be ensured by law, agreed upon between the parties and the court, which is more in line with the proposed principle of cooperation of judge and parties.

3. Organization of the Case Consideration in a Timely Manner

The second component of the organization of consideration of the case is connected with the equally actual problem of the duration of legal proceedings. According to the CPC 2004, reasonable time was provided for the consideration of a civil case, but not more than two months from the date of opening of the proceedings. Reduced terms were set only for two categories of cases, which are alimony and labor disputes. The CPC 2017 secures the principle of the reasonableness of the terms of consideration of the case by the court. Accordingly, a reasonable period of consideration is provided for simplified proceedings, but not more than sixty days from the date of opening of the proceedings.

The following time limits are foreseen for the general proceedings: the court must begin the examination of the case on the merits no later than sixty days from the date of opening of the proceedings, and, in case of extension of the preparatory proceedings, no later than the next day after the expiration of such term; the court should consider the case on the merits no later than thirty days from the date of the beginning of the trial on the merits. According to Article 189, preparatory proceedings must be held within sixty days of the opening of the proceedings, but in exceptional cases, in order to properly prepare the case for substantive consideration, this period may be extended by no more than thirty days at the request of one of the parties or by the initiative of the court. Thus, proceedings in the case may take about 120 days or 4 months: the preparatory proceedings may take 90 days, then 30 days to consider the case on the merits.

The judge, in accordance with the provisions of the new CPC, even received more power: in accordance with Article 121, he should establish reasonable time limits for the conduct of procedural actions. Procedural terms in national legislation have always been divided into two types: the ones established by law and those established by court. According to the new CPC, the court should set such terms as submission of written applications, etc. However, there are some weaknesses in the new CPC the provisions of part 7 Article 178, according to which a revocation shall be submitted within the period set by the court, but not later than fifteen days from the date of delivery of the decision on the opening of the proceedings.

This term must simultaneously allow the defendant to prepare this revocation and the relevant evidence and allow other participants of the case to receive a revocation no later than the first preparatory meeting in the case. According to Articles 179 and 180, the plaintiff and the defendant are also entitled to exchange the response to the revocation and the objections in time set by the court, but before the start of the trial on the merits. That means that, on the one hand, the basis for the cooperation between the court and the parties is created, but, on the other hand, it is hardly possible

to foresee this without exceeding the deadlines in advance. It is likely that the exchange of such documents out of court sessions by agreement between the parties during the time limit set by the court would be the best way.

4. Influence on Court Costs

During the reformation of civil justice, the approaches to judicial control of the distribution of court costs also went through some changes. For the first time in the CPC 2017, the rule on reimbursement of the court costs of the party in whose favour the judgment was made, was established in the form of a principle (Article 3 part 2). At the same time, the procedure for determination the size of these court costs and their payment and distribution was significantly complicated.

In particular, in accordance with Articles 134-135, each party must determine in its first application what legal costs it has incurred and which it intends to incur in connection with the consideration of the case; the court may accordingly oblige the parties to enforce the court's costs. The court received the relevant instruments of influence on the behavior of the parties to the case, in particular, when deciding on the allocation of costs and expenses, it may consider the behavior of the parties during the proceedings that led to the delay of the proceedings, including filing clearly unreasonable applications and petitions, unfounded allegations or objections to certain circumstances relevant to the case, unreasonable overstatement of claims by the plaintiff, etc., as well as the actions of the party in relation to the pre-trial settlement of the dispute and the peaceful settlement of the dispute during the consideration of the case, the stage of consideration of the case in which such actions were committed.

Under the current CPC, the court even has the right to oblige the party to pay all the legal costs in full or in part regardless of the outcome of dispute resolution in the case of misuse of procedural rights by this party or its representative, or if a dispute arose as a result of improper actions.

The behavior of the parties in the trial may also be affected by applying a fine as a coercive measure (in accordance with Articles 144 and 148 of the CPC). Among the grounds for its application are non-compliance with procedural obligations, in particular, evasion from the commission of actions imposed by the court on the party to the trial; abuse of procedural rights, commission of acts or assumption of inactivity in order to interfere with legal proceedings; failure to inform the court of the impossibility to file evidence requested by the court or failure to submit such evidence without good reason, etc.

Such powers of the court, established by the CPC 2017, provide it with the opportunity to effectively influence the behavior of the parties in the process, enhance its role in the dynamics of the case, and assist in the proper organization of the case.

Thus, in general, the introduction of a new principle in the organization of case studies in the legislation will help to ensure the efficiency of legal proceedings. Given the fact that there is some bias about judicial control over the dynamics of the process in Ukraine, it is necessary to specify more precisely the goals and criteria for the use of specific powers of the judge, in particular, when resolving the issue of the distribution of court costs, etc.

For effective consideration of the case, it is necessary to ensure not only loyal cooperation between the judge and the parties, but also between the parties of the dispute, impose certain procedural obligations on them. This includes the disclosure of evidence, the exchange of competitive papers, the service of judicial documents, etc. Thus, participants in the process can be inclined to organize interaction, which will likely lead them to a more compromise solution. At the same time, the court can be relieved from some functions that are not directly related to the administration of justice. The judge's control over the organization of interaction between the parties to the dispute is sufficient to ensure the dynamics of the process of its consideration and resolution.

Conclusion

The desirable membership of Ukraine in the EU cannot overshadow the need to ensure effective protection of the rights of citizens, increase confidence in the judiciary and the establishment of the work of enforcement of judgments, which, with the proper definition of the ECHR, is an integral part of the process of protection and restoration of rights.

The views expressed in this project reflect the evolutionary step towards a person appealing to the court within the EU internal market. And right now, we are witnessing remarkable events when the joint European Community launches the introduction of common minimum standards for the civil process.

The future Single European Union Code of Civil Procedure has already been identified in the Community documents, which once again confirms the correctness of its conclusions and proposed approach. Ukraine, as an integral part of Europe, in the light of future membership in the EU, should borrow best practices without losing the benefits of a national approach to the administration of justice in civil matters.

Therefore, the implementation of case management in Ukrainian procedural legislation should be reassess and fit with the complex of national system of rights protection. In particular, it is worth redefining the role of the court in the dynamics of the process. It is designed to administer justice and to guide the course of the case, and there must be a driving force behind the parties who are interested in the result.

Therefore, it is possible to leave the court with the authority to organize and control the progress of the case, and to oblige the parties to provide the necessary elements, such as delivery of documents, disclosure of evidence, exchange of written statements, etc. The court, by establishing the procedural deadlines for the performance of these duties, will influence their behavior by applying procedural coercive measures, as well as considering the distribution of court costs and the settlement of a case.

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International legal protection of encroachment on life of representative of foreign state

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Abstract

Through legal hermeneutics, the article analyzes the international legal regulation of the protection of a foreign diplomatic representative, therefore, special attention is paid to the regulation of diplomatic privileges and immunities. The need to use the positive experience of states on the introduction of internal security in diplomatic representations is based, this is the purpose of the article. It is important that, despite several existing international legal acts on the protection of diplomatic representations and their personnel, there is an urgent need to increase their efficiency and effectiveness, in particular for the filling of existing gaps in international diplomatic law through further codification and development of international law and, also, to take measures in accordance with this branch of law against the offending state, strengthening sanctions for violations by states of the provisions on the privileges and immunities of foreign diplomatic representations and their personnel. As a result, we consider it appropriate to take the measures provided for by legislation to effectively implement the rules of criminal law on the punishment of persons who have committed crimes against representatives of a foreign State who enjoy diplomatic immunity.

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Protección jurídica internacional de la vida del representante diplomático de un Estado extranjero

Resumen

Mediante la hermenéutica jurídica, el artículo analiza la regulación legal internacional de la protección de un representante diplomático extranjero, por lo tanto, se presta especial atención a la regulación de los privilegios e inmunidades diplomáticas. Se fundamenta la necesidad del uso de la experiencia positiva de los estados sobre la introducción de la seguridad interna en las representaciones diplomáticas, este es el propósito del artículo. Es importante que, a pesar de varios actos jurídicos internacionales existentes sobre la protección de las representaciones diplomáticas y su personal, existe una necesidad urgente de aumentar su eficiencia y eficacia, en particular, para el allanamiento de las lagunas existentes en el derecho diplomático internacional mediante una mayor codificación y desarrollo del derecho internacional y, también, tomar medidas de acuerdo con esta rama del derecho contra el estado infractor, el fortalecimiento de las sanciones por violaciones por los estados de las disposiciones sobre los privilegios e inmunidades de las representaciones diplomáticas extranjeras y su personal. Como resultado, consideramos apropiado tomar las medidas previstas por la legislación para aplicar efectivamente las normas del derecho penal sobre el castigo de las personas que hayan cometido delitos contra representantes de un estado extranjero que gocen de inmunidad diplomática.

Palabras clave: protección a un representante diplomático; derecho internacional público; ataque contra la vida; misión diplomática; relaciones internacionales.

Introduction

The processes of formation and development of the rule of law are impossible without the formation and development of effective levers of influence on socially dangerous phenomena, which entail the onset of legal consequences. One of such phenomena that the international community has been facing recently is terrorism, military, ethnic and other conflicts, the problems of counteraction of which do not lose relevance in modern conditions.

The need for a criminal law prohibition of the specified crimes is due in modern conditions not so much their prevalence as the extremely high degree of their social danger. The crime, which provides for liability for encroachment on the life of a representative of a foreign state, is defined by the article 438 of Section XX of its Special Part "Crimes against peace, security of mankind and international law and order" of the Criminal Code of Ukraine is not an exception in this list.

However, despite the close attention of the entire world community to the issue of ensuring the security of individuals and institutions enjoying international protection, encroachments continue to occur. Such encroachments are resonant and can seriously undermine international balance and security. Often such illegal actions are used to create obstacles to the development of friendly relations between states. The regions of political instability in the modern world are of particular concern in this regard.

Diplomatic representations play an important role in establishing cooperation between the states they represent and the host states. The effectiveness of their work largely depends on the conditions in which they work in the host state. One of the most important among such conditions is the safety of both the representation and its staff. The problem of their proper protection has long been underestimated due to the sporadic violations of diplomatic privileges and immunities. At the same time, the strong status and guarantees of the activity of such representations and individuals are increasingly subject to illegal influence, and insecurity on the part of the host state does not allow the diplomatic representations and its staff to fully and efficiently implement the tasks that are assigned to them.

To protect the premises of diplomatic representations and their staff, on the one hand, cooperation with the security services of the host country is deepening, and on the other hand, internal security services and other subsidiary bodies, which are not directly related to diplomatic activity and whose status is not regulated by international legal acts, are being set up at the diplomatic representations themselves (Kobylynska, 2019). Solving these and other issues that are related to improving the regulatory framework for the protection of a representative of a foreign state requires in-depth scientific analysis.

1. Materials and methods

The research methods are chosen considering the purpose and tasks that are set in the article, its object and subject. The methodological basis of the work is a comprehensive approach to the consideration of international legal protection of encroachment on the life of a representative of a

foreign state. During the study we used, first, the general provisions of materialist dialectics and the theory of knowledge; secondly, the provisions of international humanitarian law and the development of criminal law doctrine.

The application of an interdisciplinary approach allowed to form the idea of encroaching on the life of a representative of a foreign state, as a multifaceted phenomenon that has acquired various forms of manifestations in the modern conditions. The formal-dogmatic method that is based on the use of the rules of formal logic for the knowledge of law, served to analyze the provisions of criminal and international humanitarian legislation in the part of protection of the rights and legitimate interests of individuals, which have diplomatic immunity, provide for responsibility for the relevant illegal acts. The method of induction contributed to the definition of the substantive features of the concepts of "diplomatic immunity" and "diplomatic representation". The method of system analysis has been used in the research of the provisions of international and national legislation as a kind of system, as well as to determine strategic directions of its improvement.

The comparative law method was used to research the provisions of international humanitarian law, which made it possible to formulate several suggestions regarding the further improvement of legislation of Ukraine in this area. The logical-semantic method was used to distinguish and clarify concepts and terms, to analyze the substantive meaning of certain legal categories, which are basic in this area of counteraction – extremism, representative of a foreign state, and diplomatic immunity.

2. Analysis of recent research

Some aspects of the problem of criminal-legal counteraction to the encroachment on the life of a representative of a foreign state were covered in the works of such lawyers as: M.G. Andryukhin, O.F. Bantyshev, I.P. Blyshchenko, M.V. Buromenskyi, A.D. Guliyev, R.M. Dmytrenko, Yu.M. Kolosov, A.I. Muzyka, V.M. Repetskyi, K.K. Sandrovskyi, L.G. Falayeyeva, N.I. Shapovalov, M.O. Baimuratov, T.I. Byrkovych, O.S. Konoplianyk and others. At the same time, it should be noted that in the modern science of international humanitarian law there is a certain deficit of comprehensive researches on this topic, and the problem of improving the legal regulation of ensuring the rights and legitimate interests of the representative of a foreign state remains insufficiently studied, which does not reflect the needs of today, when there is an urgent need to develop effective legal mechanisms of protection of the lives of representatives of a foreign state, adhering to the principles of functioning of the international security system and norms of international law.

All the above indicates the relevance and importance of the topic that has been chosen for research, whose purpose is to, based on the analysis of theoretical and legal principles, international experience and generalizations of international practice, research the system of international legal regulation and protection of diplomatic privileges and immunities, to determine a set of measures to improvement of the regulatory frameworks of the protection of persons under special international protection.

3. Research and results

General frameworks of international cooperation in the field of ensuring the proper functioning of the institution of representation in international legal relations.

The international community, within the framework of international organizations, aware of the danger of encroachment on persons enjoying international protection, tried to create a legal framework, which would ensure the proper functioning of the institution of representation in the international legal relations. A certain system of such a regulatory framework began to take shape after the Second World War.

Modern international law provides for special rights that the host country grants to diplomatic missions and staff of an accredited state to facilitate the performance of their functions. Such rights are called diplomatic immunities and privileges. In this case, immunity means the removal of a diplomatic mission and its staff from the jurisdiction (criminal, civil, administrative) and coercive action from the side of the host state, and the privileges mean the special advantages of international law and benefits, which have been provided to representations and their staff in comparison to nationals of the host state (Baimuratov, 2001).

Diplomatic privileges and immunities are an important institution of foreign relations law, which is regulated and protected by a significant number of international documents. The most important of these are the Vienna Protocol of 1815 (Vienna rules) on the classes of diplomatic representatives, the Aachen Protocol of 1818, the Havana Convention on consular officials of 1928, Convention on the privileges and immunities of the United Nations, 1946, Convention on the privileges and immunities of the specialized agencies of the United Nations, 1947, Vienna Convention on diplomatic relations 1961, Vienna Convention on consular relations 1963, Vienna Convention on special missions, 1969, Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, 1973, Vienna Convention on special missions, 1969, Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents,

1973, Vienna Convention on the representation of states in their relations with international organizations of a universal nature, 1975.

Certain aspects of the legal status of diplomatic representations and their staff are governed by customary norms, as well as bilateral agreements, the signing of which is provided for in paragraph b of the art. 47 of the Vienna Convention of 1961. This paragraph allows states to both limit and expand diplomatic privileges and immunities in their relations based on the principle of reciprocity (Verkhovna Rada of Ukraine, 1961).

The specified international regulations establish the general principles of international cooperation in the field of preventing and combating encroachment on the life of a representative of a foreign state, as well as impose the obligation to promote public awareness of the existence, cause, seriousness of the specified crimes, the threat, which they pose. The significance of these international legal acts in the system of sources that regulate legal relations that are related to ensuring the security of the diplomatic mission and its staff should be assessed in the light of the article 9 of the Constitution of Ukraine, according to which international agreements, consent to be bound of which has been provided by the Verkhovna Rada of Ukraine, is part of the national legislation of Ukraine.

Article 19 of the Law of Ukraine "On international treaties of Ukraine" states that international treaties are applied in the manner that is prescribed by national law. In addition, if an international treaty of Ukraine establishes other rules than those that provided for in the relevant act of the legislation of Ukraine, the norms of the international treaty are applied. Therefore, acts of anti-terrorist legislation of Ukraine should not contradict the above-mentioned international agreements, and in case of such contradictions, priorities should be given to the provisions of international agreements.

4. Analysis of international legal documents governing legal relations in the field of prevention and counteraction to encroachment on the life of a representative of a foreign state

We consider it appropriate to begin the scientific review of the relevant international instruments with the Convention on the privileges and immunities of the United Nations of 13 February 1946, which determined the special status of United Nations (hereinafter – UN) officials, and which stated that:

> Since article 104 of the Charter of the United Nations provides that the Organization enjoys in the territory of each of its members such legal capacity as may be necessary for the performance of its functions and the achievement of its objectives, as well as whereas the article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its members

> such privileges and immunities, which are necessary for the achievement of its goals, and that representatives of UN members and its officials also enjoy such privileges and immunities, which are necessary to independently perform their functions that are related to the activities of the Organization (Bondar *et al.*, 2010: 168).

Section 18 of the article V, "Officials" of the present Convention, states that "United Nations officials: a) are not liable for what they have said or written and for all the acts that they have committed as officials; b) are exempted from taxation on salaries and emoluments that are paid to them by the United Nations; c) are released from public service duties; d) are exempted from immigration restrictions and registration of aliens together with their dependent wives and relatives; e) enjoy the same currency exchange privileges as are accorded to officials of the appropriate rank who are members of diplomatic missions that are accredited to the appropriate government; f) enjoy the same repatriation benefits that are enjoyed by diplomats during international crises, with their wives and relatives, who dependent on them; g) have the right to import duty-free their furniture and property during their initial occupation in the relevant country".

In this case, privileges and immunities are granted to officials in the interests of the United Nations and not for their personal benefit. The Secretary-General shall have the right and the obligation to abandon the immunity that have been accorded to any official, in cases when, in his view, immunity impedes the administration of justice, and it may be abandoned without prejudice to the interests of the United Nations. About the Secretary-General, the right to abandon immunity rests with the Security Council (section 20 of Article V of the Convention) (Verkhovna Rada of Ukraine, 1946).

As a continuation of the specified Convention, on November 21, 1947, the United Nations adopted the Convention on the privileges and immunities of the specialized agencies, to which the Convention referred: International Labor Organization; Food and Agriculture UN; UN on issues of education, science and culture; International civil aviation organization; International Monetary Fund; International Bank for Reconstruction and Development; World Health Organization; Universal Postal Union; The International Telecommunication Union and other agencies that are liaised with the United Nations in accordance with the articles 57 and 63 of the United Nations Charter. The officials of these specialized agencies enjoyed the same privileges and immunities as the officials of the United Nations, however, a separate article VII stipulated cases of abuse of privileges by these officials and measures to respond to such abuses (Yemelianov *et al.*, 2017; Verkhovna Rada of Ukraine, 1946).

The adoption of the Vienna Convention on Diplomatic Relations of April 18 (1961), made a significant contribution to the improvement of the legislation on diplomatic representation, according to the provisions of which there are two categories of diplomatic immunities and privileges. The first category determines the scope of immunities and privileges, which apply mainly to the premises of diplomatic representations, the second category determines their heads and staff, i.e., personal immunities and privileges.

There are some differences in the legal status, privileges, and immunities of the permanent missions of states to international organizations and diplomatic missions at the level of embassies and missions that are accredited in other states. However, in any case, the object of the violation is the generally recognized in international communication privileges and immunities of these representations and their staff, which are protected by both international law and domestic law of states.

The most important of these are: the inviolability of diplomatic missions and diplomatic staff; inviolability of archives, correspondence; immunity from jurisdiction and possible criminal prosecution of a diplomat; exemption from certain types of taxes; benefits during customs and border control, etc.

In addition, this Convention sets out the basic terms relating to diplomatic representation it defines such officials of the diplomatic corps as the "head of the representation", "staff of the representation", "members of the staff of the representation", "members of the diplomatic staff", "diplomatic agent", etc. (article 1 of the Vienna Convention on diplomatic relations).

The Vienna Convention on diplomatic relations defines the functions of a diplomatic representation, which include: in the representation of the accrediting state in the host state; in the protection in the host state of the interests of the accrediting state and its citizens within that are permitted by international law; in negotiations with the government of the host state; in clarifying by all legal means the conditions and events in the host state and notifying them to the government of the accrediting state; in the promotion of friendly relations between the accrediting state and the host state and in the development of their relations in the field of economy, culture and science (part 1 of the article 3 of the Convention on diplomatic relations). Thus, in the part 2 of article 3 of the Convention states that "none of the provisions of this Convention shall be construed as impeding the performance of consular functions by a diplomatic representation".

In view of the theme of the research, the provisions of the article 29 of the Vienna Convention on diplomatic relations, in which it is proclaimed that "the person of a diplomatic agent is inviolable. He shall not be liable

to arrest or detention in any form. The host state should treat him with due respect and take all necessary measures to prevent any encroachments on his person, will or dignity". Similarly, according to the article 30 of the Vienna Convention on diplomatic relations: "The private residence of a diplomatic agent uses the same inviolability and protection as the premises of the representation" (Verkhovna Rada of Ukraine, 1946).

The Vienna Convention on consular relations of 24 April 1963 defines such terms as "consular official", "consular officer", "consular staff" (article 1 of the Convention on consular relations). In addition, the Convention on consular relations also provided for a wide range of consular functions, the main of which is the protection in the host state of the interests of the accrediting state and its citizens (individuals and legal entities) within the limits permitted by international law (article 5 of the Convention on consular relations).

The article 41 of the Vienna Convention on consular relations defines the guarantees of personal inviolability of consular officials, according to which "consular officials are not subject to arrest or pre-trial detention, other than based on decisions of the competent judicial authority in the case of committing serious crimes. Except as provided in paragraph 1 of this article, consular officers may not be detained or subject to any other forms of restriction of personal liberty, except for the execution of judgments which have entered into force". In addition, the article 31 of the Vienna Convention on consular relations provides guarantees of the inviolability of consular posts (Verkhovna Rada of Ukraine, 1963).

The next important step in the systematization of legislation on international representation was the Convention on special missions of December 8, 1969, which defines the special regime of such special state missions. The specified Convention defines such important concepts as "special mission", "permanent diplomatic representation", "head of a special mission", "representative of the addressing state in a special mission", "members of a special mission", "members of the staff of a special mission", "members of a diplomatic personnel" (the article 1 of the Convention on special missions).

Guarantees of the inviolability of a person who is a member of a special mission that is provided for in the article 29 of the Convention on special missions, where it is stated that "the identity of the representatives of the sending state in the special mission, as well as the identity of members of the diplomatic staff of the mission is inviolable. They shall not be liable to arrest or detention in any form" (Verkhovna Rada of Ukraine, 1969).

A special place in a number of these acts is occupied by the "Convention for the prevention and punishment of crimes against persons under international protection, including diplomatic agents", December 14, 1973,

which was approved by UN General Assembly Resolution 3166 (XXVIII) and created a basis for liability for crimes that are aimed against foreign representations and their staff. The significance of this document lies primarily in the fact that the article 1 of this Convention outlines in general terms the concept of "person, who is enjoying the international protection", thus determining the range of potential victims.

Such a person is defined by the 1973 UN Convention: "a) the head of state, including any member of a collegial body acting as head of state in accordance with the constitution of the state concerned, the head of government or the foreign minister who is in a foreign country, as well as accompanying members of his family; b) any representative or official of the state, or any official or other agent of an intergovernmental international organization, when a crime has been committed against him, his official premises, his dwelling or his vehicles, has the right under international law to special protection against any attack on his person, liberty and dignity, as well as members of his family, who are living with him".

The paragraph 1 of the article 2 of the 1973 UN Convention contains the general elements of a crime against a person enjoying international protection: "The deliberate commitment: a) the killing, abduction or other assault on the person or liberty of a person enjoying international protection; b) a violent attack on the official premises, accommodation or vehicles of a person enjoying international protection which may endanger the person or liberty of the latter; c) the threat of any attack; d) attempt of any attack; e) the acts, as an accomplice to any such attack, are regarded as an offence under its domestic law by each state party."

The provision of the paragraph 2 of article 2 of the 1973 UN Convention, which establishes that "Each state party provides for appropriate penalties for such crimes, taking into account their grave nature", has also the fundamental importance. In this way, the world community demands that states be held accountable for the above actions (Verkhovna Rada of Ukraine, 1973).

In our view, the provisions of the article 2 of the 1973 UN Convention cover various but interrelated issues: first, the definition of the sphere of the actions of the Convention by establishing the crimes to which it applies; secondly, the determination of the competence of the state's parties regarding the criminal prosecution and punishment for such encroachments.

An indisputable positive moment is that in 1973, the legal components of such crimes were determined in paragraph 1 of the art. 2 of the Convention on the prevention and punishment of crimes against persons, who enjoy international protection, including diplomatic agents. These include: killings, abductions or other attacks against a person or the freedom of a person enjoying international protection; forcible attack on the official

premises, accommodation or vehicles of a person enjoying international protection, which may endanger a person or his freedom; threats of any such attack; attempts at any such attack; acting as an accomplice to any such attack.

This article also defines that the subjective side of the crime is characterized only by direct intent. In this connection, it should be recalled that the provision "... regardless of the motive" has been included to the draft of the Convention by the UN Commission on International Law, however, these words have been removed from the final version, which in some cases may allow the subject of the crime to avoid liability for failure to prove the existence of the corpus delicti, its subjective features.

It is important to bear in mind that the signing of the 1973 Convention obliges states parties to include in criminal codes uniformly worded articles with similar sanctions, which, of course, ensures the coordination of the activity of states in the fight against these crimes, which must at the same time be considered as a crime by each state party in accordance with its domestic law.

Finally, non-participation in the 1961 Convention and the 1973 Convention does not exempt a State from the compliance with proper conduct regarding foreign diplomats, at least in the light of norms of customary international law. After all, such actions, violating the norms of diplomatic law have been recognized in international communication, contradict the basic principles of modern international law in general (Verkhovna Rada of Ukraine, 1975; Verkhovna Rada of Ukraine, 1973).

At the same time, despite the important role in the mechanism of ensuring the safety of persons, which have diplomatic immunity, the content of the 1973 UN Convention should highlight several shortcomings, which are rightly noted in the special literature. Thus, for example, scientists have noted that in the general crime, which is provided for in paragraph 1 of the article 2 of the 1973 UN Convention, there is no indication of the organization of a violent attack on the victim. In addition, the said international act does not contain a direct reference to the non-application of the limitation period, which can significantly reduce the effectiveness of criminal counteraction to such crimes (Blishchenko, 1990).

Unfortunately, the UN Convention of 1973 does not require member states to criminalize at the level of national law such acts as desecration of the official symbols of a foreign state or international organization, as well as the insult of a person, who enjoy international protection. At the same time, the insulting actions against these symbols and the victims undoubtedly harm the interests of international communication and cooperation. In this regard, we share the position of N.V. Akulova, to improvement of the criminal law protection of international representative activity, issues of

responsibility for desecration of the official symbols of foreign states and international organizations, as well as for encroaching on the honor and dignity of foreign representatives, are relevant and require the independent research (Wood, 1974).

It is ambiguous in scientific circles that the text of the 1973 UN Convention does not indicate the relationship between the encroachment and the activity of the victim, with his official status. After all, in the process of adopting the UN Convention of 1973, the representatives of individual states defended the position about recognition to be insufficient of establishment of the fact of the perpetrator's awareness of the special international legal status of the victim, suggesting extending the Convention action only to cases where there is at least some relationship between the motive for the crime and the status of the victim.

Opponents of this approach rightly noted possible problems in the process of proving the motive, as well as the fact that this will reduce the effectiveness of the analyzed international document. As a result, it is possible to consider as a convective one almost any crime against a person, who enjoys international protection, which, according to many scholars, considers to be unacceptable (Sukharev, 2003).

It should be emphasized that the specified encroachment may cause significant damage not only to the international but also to the domestic national interests of the participating states. The specified international conventions oblige states to guarantee special privileges to persons and institutions, which enjoy international protection, as well as to ensure their security. If the state, having accepted the relevant obligations, does not care about their implementation, any of the specified encroachments undermines the authority of its government and deals a serious blow to the international prestige of the state.

A significant step in defining beneficiaries of international protection has been taken in the Vienna Convention on the representation of states in their relations with international organizations of a universal nature, that was adopted by the UN on March 14, 1975. The term "international organization of a universal character" includes "the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibility has wide international nature" in the preamble to this Convention. This means that, if desired, any regional or subregional organization in its relations with member states may, with their consent, apply the provisions of the 1975 UN Convention.

The 1975 UN Convention treats the institution of permanent representation as "a mission of a permanent nature, which is sent to represent it in this organization." Thus, as well as embassies, permanent

representations to international organizations are part of the system of foreign bodies of foreign relations and are part of the diplomatic service of the state. After all, they have such a fundamental feature as a representative character in their foreign activity.

In accordance with the article 28 of the Convention, the person of the head of the representation and members of the diplomatic staff of the representation are inviolable. They shall not be liable to arrest or detention in any form. The host state should treat them with due respect and take all necessary measures to prevent any encroachments on their person, will or dignity, as well as prosecute and punish those who have committed such encroachments (Verkhovna Rada of Ukraine, 1975).

Due to the growing number of casualties and injuries as a result of deliberate attacks on UN personnel and related personnel, considering that attacks or other encroachments on personnel, who acts on behalf of the United Nations cannot be justified and are unacceptable, no matter who commits them, as well as that UN operations are conducted in the general interest of the international community, the Convention on the protection of United Nations personnel and related personnel was adopted on December 9, 1994.

The main grounds for the adoption of this Convention became: an increase in the number of victims and injuries as a result of deliberate attacks on UN personnel and related personnel; the impossibility of justifying and not accepting attacks or other encroachments on personnel acting on behalf of the UN, by whomever they were carried out; significant contribution of UN personnel and related personnel to the spheres of preventive diplomacy, peacekeeping and humanitarian and other operations; existing arrangements in the field of providing security of UN personnel and related personnel, including steps that were taken in this direction by major UN bodies; insufficiency of existing measures regarding the protection of UN and related personnel; the need to provide comprehensive support to facilitate the conduction and implementation of the mandate of UN operations; the need to immediate take appropriate and effective measures to prevent attacks on UN and related personnel and to punish those who have carried out such attacks (Aldanov *et al.*, 2003).

In the context of the 1994 UN Convention, UN personnel include: 1) persons, who are recruited or sent by the Secretary-General of the United Nations as members of the military, police, or civilian components of a UN operation; 2) other officials and experts, who are seconded by the United Nations or its specialized agencies, or by the International Atomic Energy Agency, who are present in official status in the area of the UN operation. "Personnel related with it" means persons: 1) sent by a government or intergovernmental organization with the consent of the competent UN body; 2) involved by the Secretary-General of the United Nations or a specialized

institution or the International Atomic Energy Agency; 3) persons, who are sent by a humanitarian non-governmental organization or humanitarian institution in accordance with an agreement with the UN Secretary-General or with a specialized institution or the International Atomic Energy Agency to carry out activity in support of the implementation of the mandate of a UN operation.

The 1994 UN Convention defines such crimes against UN personnel and related personnel as intentional implementation: "a) the killing, abduction or other assault that is directed against a person or the liberty of any United Nations and related personnel; b) a violent attack on the offices, accommodation or vehicles of any United Nations and related personnel which may endanger the person or liberty of such personnel; c) the threats of any such attack with a view to compelling a natural or legal person to commit or refrain from taking any action; d) the attempts of any such attack; and e) the acts, which constitute as complicity in, or attempt to commit, such an attack, or the organization or issuance of an order to commit such an attack, are criminalized by each state party in accordance with its national legislation" (part 1 of the article 9 of the 1994 UN Convention).

The state party in whose territory the crimes have been committed, which are provided in the article 9 of the Convention on the protection of United Nations and related personnel, in accordance with the conditions that are laid down in its national law, in case if it has reason to believe that the "estimated" perpetrator has left its territory, informs the Secretary-General of the United Nations and directly or through the Secretary-General to the state or states concerned of all facts that are related to the committed crime, as well as provides all available information regarding the identity of the "estimated" perpetrator.

Each state party that has information about the victims and the circumstances of the commitment of crime, works to provide it in full and without delay, in the conditions, which are provided for in its national legislation, to the Secretary-General of the United Nations and the concerned state or states. The state party in whose territory the "estimated" perpetrator is located, if it does not extradite him, refers the case without exception and without undue delay to its competent authorities for the purpose of prosecuting in accordance with procedures, that have been established by the legislation of that state (the article 14 of the UN Convention on the protection of personnel) (Verkhovna Rada of Ukraine, 1994; Kalganova, 2009).

In summary, we note that in modern conditions, the provisions of the Convention on the prevention and punishment of crimes against persons, who enjoy international protection, as well as other international legal acts, are essential for the international community in view of maintaining friendly relations between state entities. However, the issue of improving the

effectiveness of combating encroachments on the lives of persons, who have diplomatic privileges and immunities, for which we see the need for more decisive and concerted action by the international community, through mutual interstate legal assistance in connection with criminal proceedings that have been committed in respect of crimes that are provided by the Convention.

Prospects of improving the fight against encroachments on the lives of persons with diplomatic privileges and immunities at the national level. In general, attacks by individuals or groups on diplomatic representations and acts of violence regarding their staff, whatever their motives, are common crimes within the sphere of the action of national criminal jurisdiction. However, such acts usually pose a threat not only to the cooperation of states, but also to the international legal order, peace, security of humankind, i.e., they acquire the character of a crime of international significance.

They are called crimes of an international nature, which should be understood as the actions of an individual who encroaches on the rights and interests of two or more states, international organizations, individuals, and legal entities in the modern international practice (Baimutarov, 2001).

Against the background of the adopted international legal acts, to which Ukraine became a party, and in connection with the proclamation of Ukraine as an independent democratic state and for the purpose of legal protection of its sovereignty, constitutional order, internal and external security by the Law of Ukraine of June 17, 1992, the article, which provided for criminal liability for a terrorist act against a representative of a foreign state in order to provoke war or international complications, was changed to article, which established liability for encroachment on the life of a representative of a foreign state that committed in order to cause international complications.

The Criminal Code of Ukraine that was adopted by the Verkhovna Rada of Ukraine on April 5, 2001, which replaced the Criminal Code of Ukraine of 1960, provided for the liability for encroachment on the life of a representative of a foreign state by the article 443, which, along with the articles 437 “Planning, preparing, unleashing and waging an aggressive war”, 444 “Crimes against persons and institutions with international protection”, 445 “Illegal use of the symbols of the Red Cross, Red Crescent, Red Crystal” is included in Chapter XX of the Special Part of the Criminal Code of Ukraine “Crimes against peace, security of humankind and international law and order” (Verkhovna Rada of Ukraine, 2001).

Speaking about the object of crimes of Chapter XX of the Special Part of the Criminal Code of Ukraine, it should be noted that first time the UN Commission on International Law distinguished between ordinary international illegal actions (“public torts”) and extremely serious violations of international law “international crimes” in the middle of the last century.

Since the early 1990s, the formation of such a branch of international and national law as international substantive criminal law has begun. Namely, serious international crimes have become the main subject of its regulation: crimes against peace, crimes against humanity and military crimes. It is accepted to call international criminal law in such a narrow sense universal in the science (Zelinskaya, 2003; Abashidze *et al.*, 2016).

As a generic object of crimes under the articles 443-446 of the Criminal Code of Ukraine, we suggest considering the system and order of public relations that are protected by international law, which ensure the peaceful coexistence of states, compliance with the rules of international communication, conduct and resolution of armed conflicts, as well as international guarantees of security of national, ethnic, racial, religious groups, and humanity. The specific object for the specified crimes should be considered the international legal order as a state of international legal relations, which ensures the sustainable development of peaceful coexistence of states and peoples, productive interstate and interethnic cooperation that is based on the principles and norms of international law.

The above allows us to formulate the main tasks of international institutions that ensure international order: maintaining peace and stability in the world, raising the socio-economic standards of living of all humankind, humanizing the activity of international and national powerful institutions, protecting the subjects of international law from unlawful encroachments.

Persons, who have committed any acts of seizure of diplomatic representations or consular institutions and violence against persons, who are under special protection of international law should be prosecuted, regardless of the motives for committing the crime and the reasons to which they refer.

Some adjustment is required to determine which officials may be victims of the crime, which is provided by the article 443 of the Criminal Code of Ukraine, the disposition of which defines two categories of such persons: a representative of a foreign state or another person, who have international protection. A representative of a foreign state in the person of heads of foreign states, heads of parliament and government delegations, persons, who are included in parliamentary and governmental delegations of foreign states as their members, and who are in the territory of the third party to participate in interstate negotiations, international conferences and meetings or with other official assignments, heads of diplomatic representations, heads of consular institutions are also persons who are under special international protection in the performance of their duties.

Therefore, in the right opinion N.V. Akulova, the above categories of victims of crime, which is provided by the article 443 of the Criminal Code

of Ukraine, may be combined into one "persons, who have international protection", as it has been done in the article 444 of the Criminal Code of Ukraine: "Crimes against persons and institutions, who have international protection" (Akulova, 2018: 34).

Also, in accordance with the Convention on the prevention and punishment of crimes against internationally protected persons, including 1973 diplomatic agents, members of the families of the head of state, the head of government, the minister of foreign affairs who are in a foreign state and accompanying them are under special international protection. In view of this, it seems logical to extend the specified provision to relatives and family members of all authorized persons who have special international protection (both representatives of foreign states and international organizations).

It is a question of inclusion in a circle of victim's nearest and traditional "close relatives". We believe that the list of close relatives that is defined by the Criminal Procedure Code of Ukraine can be applied in the theory and practice of international legal relations, which are related to the protection of persons, who have special international protection.

Conclusions

Summing up, we note that the international community within international organizations, aware of the danger of encroachments on persons, who enjoy international protection, created a legal framework to ensure the proper functioning of the institution of representation in international legal relations. A certain system of such a regulatory framework began to take shape in the second half of the XX century. They are the Convention on the privileges and immunities of the United Nations of 13 February 1946, the Vienna Convention on Diplomatic Relations of April 18, 1961, the Vienna Convention on consular relations of 24 April 196, and the Convention on special missions of December 8, 1969.

It is difficult to overestimate the importance of the listed international legal acts of the Convention on the prevention and punishment of crimes against persons, who enjoy international protection, including diplomatic agents, of 14 December 1973, which created the basis for liability for crimes regarding the foreign representations and their staff. An important step in defining beneficiaries of international protection has been taken in the Vienna Convention on the representation of states in their relations with international organizations of a universal nature, which was adopted by the UN on March 14, 1975. In addition, the Convention for the protection of United Nations and associated personnel was adopted on 9 December 1994, which defined a list of specific actions that were understood as crimes against UN personnel and related personnel.

The Criminal Code of Ukraine, adopted by the Verkhovna Rada of Ukraine on April 5, 2001, stipulates the article 443 liability for encroachment on a life of representative of foreign state in the Section XX of the Special Part of the Criminal Code of Ukraine "Crimes against peace, security of humankind and international law".

The current dynamic development of international relations convincingly states that the existence of international legal norms in the field of diplomatic immunities and privileges is currently insufficient. Of particular importance is the need to improve the international legal framework in the part of using the positive experience of the practice of states for the introduction of diplomatic representations of internal security.

Despite a number of available international legal acts about the protection of diplomatic representations and their staff, we see an urgent need to increase their efficiency and effectiveness, in particular regarding addressing the available gaps in international diplomatic law through the further codification and progressive development of norms relating to international law; taking measures that are provided by this branch of law regarding the offending state, strengthening sanctions for violations by states of the provisions concerning the privileges and immunities of foreign diplomatic representations and their staff; taking measures that are provided for by national law regarding the effective application of the rules of criminal law relating to the punishment of persons, who have committed crimes against representatives of a foreign state, who enjoy diplomatic immunity.

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